

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MISSOURI  
3 EASTERN DIVISION  
4 James Garavaglia, )  
5 )  
6 Plaintiff, )  
7 )  
8 v. ) Case No. 4:20-CV-1681-CDP  
9 )  
10 City of St. Louis, )  
11 et al., )  
12 )  
13 Defendants. )  
14 )  
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17 )  
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24 )  
25 )

VIDEO RECORDED DEPOSITION

OF

JAMES GARAVAGLIA

Taken on behalf of Defendant Darlene Green  
January 21, 2022

Julie Ann Whiting, CCR 830, RPR



1                   And it was only at that time where there  
2   was a list of so-called reasons for this to come  
3   about. Basically my life was in shambles. The  
4   physical and emotional effect created by what was  
5   done on July the 2nd of 2019 left me with the choice  
6   of appealing through the Civil Service Commission.  
7   And if I was successful there, I would be placed  
8   back into an extremely hostile environment, the work  
9   environment. She didn't want me there. And I would  
10   be placed in an intolerable situation. And because  
11   of that, I had no choice at that particular time  
12   except to say, well, maybe, just maybe if I was  
13   reinstated, I could have the chance to work in  
14   another department, in another area for comparable  
15   salary.

16                  But by the time -- the period from July to  
17   I believe in the end of August when the pre-term  
18   notification came to me, I had enough and left. I  
19   had no spirit to go about trying. I didn't have  
20   the -- I just didn't have what it took to go back  
21   and work in City government again. I had no choice  
22   at that point. And it was a difficult decision, but  
23   I felt it was the only one I had available to me,  
24   and so I felt compelled at that point in time, due  
25   to the environment that I would be placed back in

1 had I been successful at Civil Service, that I had  
2 to put in my papers to retire.

3 Q Okay. Fair enough. All right. And we're  
4 going to talk, obviously, a lot more about all of  
5 that, but let me kind of go back a bit and talk  
6 about the positions that you've held with the City  
7 of St. Louis. And I guess to facilitate, I'm going  
8 to give you back Exhibit 27 and tell us your -- the  
9 positions that you've held with the City of  
10 St. Louis.

11 A Well, the positions -- my entire career  
12 was spent in the Comptroller's office. Primarily I  
13 started in -- in a -- a role that was assisting the  
14 Deputy Comptroller at the time, a variety of things,  
15 getting to know how City government worked.

16 At that -- from there, there was a change,  
17 in that Comptroller Berra left the office, became  
18 the Assessor, and Comptroller Jones came in. And it  
19 was under his administration that he asked me to  
20 manage -- and that I had previous experience in  
21 management -- to manage a selected group of diverse  
22 areas that weren't quite accounting related, but yet  
23 needed some day-to-day supervision.

24 And so the position of Asset Manager was  
25 created at that time, specifically tailored to the

1           **Q     Okay. Tell us about the**  
2           **application/selection process for this new position**  
3           **you were appointed to by Comptroller Green. What**  
4           **was that process?**

5           A     Well, it was a preexisting position. It  
6           was not a new position.

7           **Q     Right.**

8           A     And the application process is -- was  
9           standard, as would be for any civil service position  
10          in that you fill out an application, that you can  
11          attach a resume if you would -- if you wanted to,  
12          and that there would be an evaluation if you met the  
13          minimum qualifications by the Personnel department,  
14          but prior to you being considered for interview at  
15          that point. So that's -- then you would go before a  
16          panel, you would be interviewed, you would be ranked  
17          by that panel, and then you would await a second  
18          interview with the department that would be hiring  
19          for that position.

20          **Q     Okay. And -- and when you were promoted,**  
21          **for the record, you were a white male; is that**  
22          **correct?**

23          A     Yes, sir.

24          **Q     Okay. And as part of that selection**  
25          **process, if I'm understanding, how many names are**

1           A     Oh.

2           Q     Have you had an opportunity to review that  
3     packet?

4           A     I have glanced through, yes, sir.

5           Q     Okay. Does this appear to be the  
6     rating info -- well, strike that.

7                     Does this appear to be the evaluation  
8     information in conjunction with your application for  
9     the position of Deputy Comptroller, Finance and  
10    Development?

11          A     It appears to include two pages which are  
12    how the preliminary interviews scored my preliminary  
13    interview. There --

14          Q     Right.

15          A     Those are in here, yes.

16          Q     All right. And it also ranks the  
17    individuals; is that correct?

18          A     It does.

19          Q     All right. Did you receive any  
20    communication from Personnel at the time where they  
21    advised you where you ranked as it related to this  
22    position?

23          A     I'm not certain.

24          Q     All right. According to this document, at  
25    least the first page of the document, it looks like

1 the rankings are -- you were listed and ranked as  
2 number 5 of 6; is that correct?

3 A Yes, sir.

4 Q All right. Do you know why you were  
5 ranked 5 out of the 6 candidates for that position  
6 at that time?

7 A I can only refer back to the comments --

8 Q Okay.

9 A -- made by the people who conducted the  
10 interviews.

11 Q All right. Well, let's flip to those.  
12 And these are unmarked, but for the purpose of the  
13 record and part of Exhibit 29, there is a form  
14 document, and that form document is entitled Oral  
15 Interview Rating Form. Do you see that?

16 A Yes, sir.

17 Q All right. And is that what you're  
18 talking about in terms of the evaluations?

19 A Yes, sir.

20 Q All right. Now, the first form that I  
21 see, it looks like it's dated 2/26/16, with a score  
22 of 57. Is that the same page you're on?

23 A Yes, sir.

24 Q And you were rated, it looks like,  
25 average; is that correct?

1           A     Yes, sir.

2           Q     And could you read the comments in that  
3     particular evaluation?

4           A     Good work experience and knowledge of -- I  
5     think it might say process.

6           Q     Is it players?

7           A     Players. Okay. Players.

8           Q     The players.

9           A     Okay.

10          Q     Okay. Okay. Continue.

11          A     I can't read the first word.

12          Q     Okay.

13          A     Some lack of knowledge of finance area.

14          Q     Okay. So this particular evaluator  
15     determined that you lacked some knowledge in the  
16     finance area; is that correct?

17          A     Right.

18          Q     All right. And let's go to the next Oral  
19     Interview Rating Form, and that score was a 59, and  
20     average; is that right?

21          A     Yes.

22          Q     And the rater -- it looks like it's dated  
23     2/26/16; is that correct?

24          A     Yes.

25          Q     Okay. And let's read what that particular

1     **evaluator commented.**

2           A     Okay. It says, Struggled to answer the  
3     technical questions related to debt and financing.

4           **Q     Okay. And do you agree with that? Did**  
5     **you during that process struggle to answer questions**  
6     **related to debt and financing?**

7           A     I'm not sure I'd use the word struggle. I  
8     think I'd use the word that I could have done a  
9     better job, but this was the area where I had the  
10    least experience.

11          **Q     Okay. Fair enough. Why did the position**  
12    **of Deputy Comptroller of Finance and Development**  
13    **become available?**

14          A     The incumbent, the person that I worked  
15    for for over 20 years, had passed away.

16          **Q     And that was Ms. Ivy Pinkston?**

17          A     Yes, sir.

18          **Q     And Ms. Ivy Pinkston was an African**  
19    **American woman; is that right?**

20          A     Yes, sir.

21          **Q     Okay. How many Deputy Comptrollers were**  
22    **there at the time you were promoted by Comptroller**  
23    **Darlene Green to Deputy Comptroller of Finance and**  
24    **Development?**

25          A     One.



1 associated with a finance department, meaning paying  
2 the bills, collecting the money, that kind of thing.

3 **Q Okay. Do you know how old Beverly**  
4 **Fitzsimmons is, approximately?**

5 A No, sir, I do not.

6 **Q All right. When you were promoted to**  
7 **Deputy Comptroller, were you given a raise?**

8 A Yes, sir.

9 **Q How large of a raise?**

10 A In the position that I was in, it was a  
11 Grade 19. The position Asset Manager II, I believe,  
12 is a Grade 19 in the Civil Service system. The  
13 position that I assumed in the Civil Service  
14 position was a Grade 21. And so if you were to be  
15 promoted, each grade that you would ascend to is a  
16 5 percent increase, I believe, in the Department of  
17 Personnel policies.

18 **Q Okay. And so I guess my question was:**  
19 **You -- well, let me -- let me state it this way:**  
20 **You received a promotion from Comptroller Darlene**  
21 **Green; correct?**

22 A Yes, sir.

23 **Q You received a raise when you were**  
24 **promoted that had to be approved by Comptroller**  
25 **Darlene Green; correct?**

1           A     Yes, sir.

2           Q     Do you recall if that raise was  
3     10 percent?

4           A     I believe it was.

5           Q     All right. Do you know if at the time you  
6     were promoted and given this 10 percent raise,  
7     whether or not at that time you were actually making  
8     more than the Comptroller?

9           A     I did not know that, no.

10          Q     Okay. So you don't know one way or the  
11     other; is that correct?

12          A     At that time, I did not.

13          Q     Do you know now?

14          A     I do know now.

15          Q     Okay. And what do you know now as it  
16     relates to your salary in comparison to Comptroller  
17     Green's salary?

18          A     The salary that I was at was considerably  
19     more than the Comptroller made.

20          Q     Okay. And for the record, Comptroller  
21     Darlene Green is an African American woman; is that  
22     correct?

23          A     Yes, sir.

24          Q     All right. Are you familiar with the City  
25     of St. Louis Employee Code of Conduct?

1     that, you know, it may not have been completed due  
2     to the fact that the time frame would have passed  
3     without the supervisor realizing that the person was  
4     due for a service rating.

5           **Q     Okay. Throughout your entire tenure at**  
6     **the City of St. Louis, were you always rated?**

7           A     I believe I was --

8           **Q     Okay.**

9           A     -- until the last three years.

10          **Q     Until the last three years. Okay. Let me**  
11     **hand you a document -- I'm sorry to be out of order**  
12     **here, but let me hand you a document that's been**  
13     **marked as Garavaglia Deposition Exhibit 25 and ask**  
14     **you to take a look at that.**

15          A     Do you -- do you want it back?

16          **Q     Yes. Thank you.**

17          A     Okay. Okay.

18          **Q     Have you seen that document before?**

19          A     It says that I would have received a copy  
20     of it in 1988.

21          **Q     All right. And for the record, Garavaglia**  
22     **Deposition Exhibit 25 is a letter dated April 15,**  
23     **1988; is that correct?**

24          A     Yes.

25          **Q     And it's from what is identified as the**

1 Department of Personnel, Ms. Josephine Profeta,  
2 Acting Manager, Personnel Services; is that correct?

3 A Uh-huh. Yes, sir.

4 Q All right. And it's cc'd to you, it  
5 appears?

6 A Yes, sir.

7 Q All right. And the Re: line says  
8 Mr. James M. Garavaglia, Special Assistant to the  
9 Comptroller, Comptroller's Office; is that correct?

10 A Yes, sir.

11 Q And was that your initiation into the City  
12 of St. Louis as an employee --

13 A Yes.

14 Q -- that position?

15 A Yes, sir.

16 Q All right. And it's addressed to  
17 Honorable Paul M. Berra, Comptroller, Comptroller's  
18 Office; correct?

19 A Yes, sir.

20 Q And I'll just read it into the record.  
21 Dear Mr. Berra, the Department of Personnel has not  
22 received the permanent status rating of Mr. James  
23 Garavaglia, Special Assistant to the Comptroller,  
24 Comptroller's Office, for the rating period ending  
25 March 1, 1988. In accordance with Rule VIII of the

1 Rules of the Department of Personnel, quote, Failure  
2 by the appointing authority to give such notice to  
3 the Director of Personnel within 30 days of  
4 termination of the working test period shall have  
5 the same force and effect as affirmative action on  
6 the part of the appointing authority in granting to  
7 the employee permanent status in the position.

8 Since the permanent status rating form of  
9 the above-named employee has not been returned  
10 within the required period of time stated, it is  
11 necessary for us to grant the employee permanent  
12 status for the period ending March 1, 1988.

13 Did I read that correctly?

14 A Yes, sir, you did.

15 Q All right. And does this represent at  
16 least one instance where you were not rated and as a  
17 result of not being rated, you effectively were  
18 granted permanent status; correct?

19 A This is not -- this is not the same thing.

20 Q Well, I didn't ask --

21 A You asked me if I recalled a time where I  
22 had not received a service rating --

23 Q Okay.

24 A -- and I said that, no, I did not.

25 Q Okay.

1           A       What this is referring to is when I was  
2       initially hired by the City. You are in a working  
3       test period.

4           **Q       Right.**

5           A       And what this implies or basically says is  
6       that I completed the calendar time period of my  
7       working test period and that the appointing  
8       authority at the time did not certify to the  
9       Department of Personnel that I should be retained or  
10      not through the working test period. In other  
11      words, this is about passing or failing the working  
12      test period --

13          **Q       Right.**

14          A       -- not the service record.

15          **Q       I understand that.**

16          A       That's not the same thing.

17          **Q       But in this test period, you are rated --**  
18      **in this case, you would have been rated by the then**  
19      **Comptroller, Mr. Berra; is that correct?**

20          A       Most likely by his deputy.

21          **Q       All right. And because there was no**  
22      **rating of any sort for this particular evaluation,**  
23      **you were then determined to have permanent status by**  
24      **rule; is that correct?**

25          A       That's correct, but this is not a service

1 rating.

2 Q I understand. I understand. Okay. All  
3 right. Now, let's go back to the Employee Code of  
4 Conduct. You are familiar with that because  
5 annually you're required to sign a form saying I  
6 reviewed and understand the Employee Code of  
7 Conduct; correct?

8 A Yes, sir.

9 Q All right. And would you agree with me  
10 that as a supervisor/employee of the City of  
11 St. Louis, you have an obligation to efficiently and  
12 effectively direct the activities of your  
13 subordinate. You would agree with that, wouldn't  
14 you, sir?

15 A Generally speaking, yes.

16 Q All right. And as Deputy Comptroller  
17 Supervisor for the City -- City of St. Louis, you  
18 had an obligation to display appropriate, respectful  
19 behavior and follow the directions given by your  
20 supervisors; correct?

21 A Yes, sir.

22 Q All right. Under that Employee Code of  
23 Conduct, you also had an obligation to act with  
24 honor, faithfulness, loyalty, fairness, and due  
25 diligence in conducting your job responsibilities.

1     **You agree with that; right?**

2           A     Yes, sir.

3           Q     All right. And you also had an obligation  
4     to comply with all applicable laws and regulations;  
5     is that correct?

6           A     Yes, sir.

7           Q     And those laws would include the charter  
8     for the City of St. Louis; is that right?

9           A     Yes, sir.

10          Q     You also had an obligation to meet  
11     acceptable standards of performance. You agree with  
12     that; right?

13          A     Yes, sir.

14          Q     You had an obligation in your various  
15     capacities as a City employee not to take any  
16     actions that were illegal or unethical or in  
17     violation of the rules and regulations of the City  
18     of St. Louis; correct?

19               MR. BLANKE: Let me just object to the  
20     line of questioning on the basis that the Code  
21     of Conduct speaks for itself. If you're asking  
22     him whether he knows about those requirements,  
23     that's fine. But you're asking him what's in  
24     the Code of Conduct, it seems, and so I object  
25     on the basis that the document speaks for



1     you -- you -- you -- you have degrees in accounting;  
2     correct?

3           A     I do.

4           Q     And you understood as an accountant that  
5     it's important to make sure that financial  
6     transactions of entities are documented fully and  
7     completely. Can we agree with that?

8           A     Yes, sir. Yes, sir.

9           Q     All right. As Deputy Comptroller, you  
10    also had an obligation to make sure that the City's  
11    books and records reflect, in an accurate and timely  
12    manner, all transactions; correct?

13          A     To the best of my ability, yes, sir.

14          Q     Yes. Accurate and timely. Those are key  
15    points when we're talking about financial revenues  
16    of a city with some excess of a billion dollars in  
17    revenue; is that correct?

18               MR. BLANKE: Well, let me object to the  
19    compound nature.

20          A     Well, I don't know about -- I don't know  
21    the answer.

22               MR. BLANKE: Hold on a second. When I  
23    object, stop talking.

24               MR. NORWOOD: I'll withdraw the question.

25          Q     (By Mr. Norwood) You had an obligation as

1 Deputy Comptroller not to make any misleading  
2 representations or falsify any records or engage in  
3 false communication of any kind, whether internal or  
4 external, including, but not limited to or filing  
5 any false report, attendance, production, financial,  
6 or similar reports and statements? You had that  
7 obligation; is that correct?

8 MR. BLANKE: Let me object again in that  
9 the question is vague and ambiguous as to  
10 whether you're asking him if it's his opinion  
11 that he had that obligation or whether that's  
12 what the Code of Conduct specifically states.

13 Q (By Mr. Norwood) What I'm asking you is:  
14 Is it your understanding that you had that  
15 obligation as the Deputy Comptroller of the City of  
16 St. Louis during the time frame you acted as Deputy  
17 Comptroller of the City of St. Louis?

18 MR. BLANKE: So just for clarification,  
19 you're asking for his opinion?

20 MR. NORWOOD: What I'm asking him is do  
21 you know whether or not -- I'll rephrase the  
22 question.

23 Q (By Mr. Norwood) Do you know whether or  
24 not under the Code of Conduct, you had that  
25 obligation?

1           A       I'm not certain I answer -- I understand  
2       what we're doing here. I don't understand that. I  
3       don't understand the question, to be honest with  
4       you.

5           Q       All right. All right. Let me wrap it up  
6       with this question: Did you understand during the  
7       time you were Deputy Comptroller of Finance and  
8       Development of the City of St. Louis that you had an  
9       obligation to be completely honest in your dealings  
10      with the public, elected officials, appointing  
11      authorities, supervisors, and fellow employees? Did  
12      you have that understanding?

13          A       Yes, sir.

14          Q       All right. And you also had an  
15      understanding that lying in any form, omitting some  
16      facts, or exaggeration undermines the fundamental  
17      trust that must exist between employer -- employer  
18      and employee and has no place in public service?  
19      You would agree with that as well; correct?

20                 MR. BLANKE: Are you -- are you asking him  
21      whether he agrees with the policy in the Code  
22      of Conduct?

23          Q       (By Mr. Norwood) What I'm asking him is  
24      whether or not you understood under that St. Louis  
25      Code of Conduct that you signed every year that you

1     **undertook that obligation as the Deputy Comptroller**  
2     **of the City of St. Louis?**

3           A     Is it stated in there specifically, what  
4     you just read me?

5           Q     And I -- I mean, and we'll review the Code  
6     of Conduct. What I'm trying to figure out is  
7     that -- did you understand you had that obligation,  
8     that lying in any form -- internal/external -- in  
9     the context of a public servant is unacceptable?  
10    You understood that, correct?

11          A     I understood the Code of Conduct. I'm not  
12    sure what you asked me is in there.

13          Q     All right. Aside from whether it's in the  
14    Code of Conduct, did you have an understanding at  
15    the time you were Deputy Comptroller that lying in  
16    any form, internally or externally, by you would be  
17    unacceptable?

18          A     Yes, sir.

19          Q     Okay. I don't know --

20               MR. BLANKE: Even -- even if the  
21    Comptroller asks him to lie. Correct? You're  
22    saying unqualified no matter what the  
23    situation?

24          Q     (By Mr. Norwood) Let me ask you -- let me  
25    ask you the next question. Do you recall any time

1           A       With and at the direction of an attorney  
2       in the City Counselor's office, that it was not a  
3       contract -- a new contract, it was exercising an  
4       option in the existing contract -- I'm sorry -- in  
5       the existing lease that the City had with the  
6       lessee.

7           **Q       Okay. Fair enough. Do you know -- other**  
8       **than the Comptroller, who else in the Comptroller's**  
9       **office would be designated by the Comptroller to**  
10      **sign contracts on her behalf or on behalf of the**  
11      **City?**

12               MR. BLANKE: Objection. It's unduly vague  
13       as to time.

14               MR. NORWOOD: Well -- fair enough.

15               MR. BLANKE: Are you talking about all  
16       throughout?

17           **Q       (By Mr. Norwood) I'll rephrase the**  
18      **question.**

19               **During the time you were Deputy**  
20      **Comptroller, did you have an understanding as to who**  
21      **other than the Comptroller she had designated to**  
22      **sign contracts on her behalf or on behalf of the**  
23      **City?**

24           A       Yes.

25           **Q       Who -- who is that?**

1 A Beverly Fitzsimmons.

2 Q Anyone else that you're aware of?

3 A I know that Judy Armstrong had been  
4 authorized to sign something. I'm not sure what  
5 kind of documents.

6 Q Okay.

7 MR. NORWOOD: Now may be a good time to  
8 take a break. I'm about to dive into maybe  
9 some of these documents here, if that's okay,  
10 or we can keep going.

11 MR. BLANKE: It's up to you.

12 MR. NORWOOD: All right. Let's take a --

13 MS. McMILLEN: For the record, where are  
14 we on time?

15 THE VIDEOGRAPHER: This is the  
16 videographer. We're going off the record. The  
17 time now is 10:58.

18 (Off the record at 10:58 a.m.)

19 (On the record at 11:19 a.m.)

20 THE VIDEOGRAPHER: This is the  
21 videographer. We're back on the record. The  
22 time now is 11:19.

23 Q (By Mr. Norwood) Okay. Do you know who  
24 hired Ivy Pinkston?

25 A Yes.

1           Q     Who?

2           A     Comptroller Jones.

3           Q     Comptroller Virvas Jones?

4           A     Yes, sir.

5           Q     All right. And what race is -- or was  
6     former Comptroller Berra?

7           A     He was white.

8           Q     I'm sorry?

9           A     He was white.

10          Q     All right. Now, let's talk about ratings.  
11     What is a rating in the context of St. Louis City  
12     government and employees?

13          A     It's an annual review of an employee's  
14     performance with the framework of how you  
15     characterize and categorize an employee's  
16     performance dictated and outlined to a format  
17     designed by the Department of Personnel.

18          Q     And those are required to be given  
19     annually, you understand? Is that your  
20     understanding?

21          A     Yes, sir.

22          Q     All right. All -- so just so I'm clear,  
23     it's your understanding as a supervisor -- former  
24     supervisor with the City of St. Louis, that every  
25     supervisor is required to rate every employee on an

1     **annual basis; is that correct?**

2           A     That is my understanding.

3           **Q     All right. And how did you acquire that**  
4     **understanding?**

5           A     I'm not sure that I specific -- I must  
6     have read it someplace --

7           **Q     All right.**

8           A     -- in -- in something that I guess we were  
9     given to -- to look at, to read, to acknowledge, and  
10    understand. I'm not sure.

11          **Q     All right. And it's your testimony today**  
12    **that up until the time you started as Deputy**  
13    **Comptroller, for all of those years leading up to**  
14    **that, you would have received an annual rating; is**  
15    **that correct?**

16          A     That is my recollection.

17          **Q     All right. And it is also your testimony**  
18    **that the individuals who were direct reports to you**  
19    **during the time you were Deputy Comptroller of**  
20    **Finance and Development, you did annual ratings for**  
21    **those direct reports; is that correct?**

22          A     Yes, sir.

23          **Q     All right. Who were those direct reports**  
24    **that you would have done annual ratings for?**

25          A     Well, they would have been the



1 telecommunications staff. It would have been my  
2 administrative assistant. It would have been the  
3 supervisor over the Gateway Transportation Center.  
4 It would have been -- I can't remember the title of  
5 the person, but it -- it's -- it's someone who  
6 worked in the Finance and Development area. There's  
7 two people in the Finance and Development area that  
8 were direct reports.

9 **Q Okay. Well, let -- let's talk names. All**  
10 **right. You referred to your assistant. Who is your**  
11 **assistant?**

12 A Sheila Woods.

13 **Q All right. And you annually rated**  
14 **Sheila Woods every year; is that correct?**

15 A To the best of my recollection, yes, sir.

16 **Q All right. Who else by name did you**  
17 **annually rate during the time you were Deputy**  
18 **Comptroller?**

19 A I would have rated Robin Jones, who was  
20 the supervisor at the Gateway Transportation Center.  
21 I would have rated her successor, Sonia Day. I  
22 would have rated Marsha Veal, who worked in real  
23 estate. I would have rated John Diliberto in  
24 telecommunications.

25 MR. BLANKE: I'm sorry. John who?

1 THE WITNESS: Diliberto,  
2 D-I-L-I-B-E-R-T-O.

3 A I would have rated Marilyn Maxwell in  
4 telecommunications. I would have rated Sheri Cross  
5 in telecommunications.

6 Q What about Ray Gant?

7 A I would have rated Ray Gant.

8 Q Okay. Anybody else?

9 A I would have rated Ryan Coleman. I can't  
10 remember the other lady's name.

11 Q Okay. What is your understanding of what  
12 happens if someone is not rated?

13 A I don't understand the question.

14 Q Are you -- have you -- well, you weren't  
15 rated. Let's talk about you. The first year you  
16 served as Deputy Comptroller of Finance and  
17 Development, you said you weren't rated; is that  
18 correct?

19 A I don't think I was -- that I said that,  
20 but I was not rated in any of the three years that I  
21 was Deputy.

22 Q Any of the years you were Deputy, you were  
23 not rated?

24 A Yes, sir.

25 Q All right. So let's talk about the first

1     **year, which would have been -- when would your**  
2     **rating have been -- is it your year of service in**  
3     **the position? Is that right?**

4           A     Yes, sir.

5           Q     **So you would have been due for a rating in**  
6     **June of 2017; is that correct?**

7           A     Yes, sir.

8           Q     **All right. And you didn't receive a**  
9     **rating?**

10          A     Did not.

11          Q     **Did you inquire about why not?**

12          A     No, I did not.

13          Q     **Why not?**

14          A     I think the -- probably the -- the reason  
15     I did not was the relationship that I had with my  
16     boss at the time was not conducive to telling her  
17     that she didn't do her job.

18          Q     **Okay. And so you were -- in your view,**  
19     **you understood, according to you, that it was**  
20     **required -- correct -- at that time?**

21          A     It was requested by the Department of  
22     Personnel. I'm not sure why it would -- when you  
23     say required, I mean, it's not like something was  
24     going to happen to me or to the supervisor when it  
25     didn't happen, but --

1           Q     Okay. But it didn't happen with you;  
2     right?

3           A     It did not.

4           Q     You didn't bring it to the attention of  
5     your boss; correct?

6           A     That's correct.

7           Q     You didn't bring it to the attention of  
8     the Director of Personnel; correct?

9           A     That's correct.

10          Q     All right. And the same with respect to  
11     2018? You weren't rated in 2018; correct?

12          A     Correct.

13          Q     And you never brought that to the  
14     attention of your boss, Darlene Green; correct?

15          A     That's correct.

16          Q     You never brought it to the attention of  
17     Personnel; is that correct?

18          A     That's correct.

19          Q     Do you know if other individuals that  
20     Comptroller Green supervised received annual  
21     ratings?

22          A     No, sir. I don't know that.

23          Q     Do you know Chana Morton; is that correct?

24          A     I do. I do. I know who she is, yes.

25          Q     And -- and who is she?

1           A       She's the Comptroller's secretary.

2           Q       All right. And was she secretary when you  
3       were elevated to Deputy Comptroller?

4           A       I'm not certain that she was in 2016, but  
5       I -- I don't know. I -- I'm not sure.

6           Q       Okay. Do you know if she was rated on an  
7       annual basis?

8           A       No, sir, I do not.

9           Q       And as you sit here today, during that  
10       time frame you were Deputy Comptroller -- you don't  
11       know who Comptroller Darlene Green would have rated  
12       during that time frame that you were Deputy  
13       Comptroller. Is that fair?

14          A       I do not know who she rated. All I know  
15       is that she would have rated direct reports.

16          Q       Okay. And those direct reports include  
17       white employees; correct?

18          A       Yes.

19          Q       Those direct reports included African  
20       American employees; correct?

21          A       Yes.

22          Q       Those direct reports included white male  
23       employees; correct?

24          A       Yes.

25          Q       Those direct reports included white female

1       **employees; correct?**

2           A       Yes.

3           **Q       African American female employees;**  
4       **correct?**

5           A       Yes.

6           **Q       And there is other nationalities; is that**  
7       **correct?**

8           A       Yeah, I -- I'm not aware of what their  
9       ethnic background would have been.

10          **Q       Got it. Fair enough. Now, you in your**  
11       **Complaint -- let's talk about your lawsuit. You**  
12       **allege that you have been discriminated based on**  
13       **your age; is that correct?**

14          A       Yes.

15          **Q       And why is it -- or strike that.**  
16                   **How have you been discriminated based on**  
17       **your age, in your view?**

18          A       At the time that I was offered the  
19       position, in a conversation with the Comptroller,  
20       she said specifically, I'm glad you accepted the  
21       position, because this will be a great way for you  
22       to round out and complete your career with the City  
23       as a Deputy. You'll be able in a couple years to go  
24       out on top as a Deputy.

25          **Q       Okay.**

1           A     And I didn't understand the meaning of her  
2     comments at the time, but I believe that her  
3     comments were basically telling me that my plans for  
4     you are short-term and that I would expect you to  
5     leave the office when you reached full Social  
6     Security retirement age. She was very specific  
7     about -- she said in a couple of years. And I  
8     didn't do that.

9           Q     Okay. Let me -- let me -- let's unpack  
10    that a bit. Let's get the words down. She said --  
11    what did she say exactly, as best you can recall?

12          A     She said that I'm glad you accepted the  
13    position. It will give you the opportunity to go  
14    out on top in a couple of years and retire as a  
15    Deputy Comptroller.

16          Q     So you recall her saying a couple years;  
17    right?

18          A     That's right.

19          Q     All right. And you were there a total of  
20    how many years?

21          A     Three.

22          Q     Three years. So you interpreted a couple  
23    years to mean three years? Is that what you  
24    interpreted?

25          A     No. I interpreted a couple years to be a

1 couple, meaning two.

2 Q All right. So you -- you exceeded the  
3 two. You made it to three. Is that your  
4 understanding?

5 A Yes, sir.

6 Q All right. And -- and she said you can go  
7 out on top as Deputy Comptroller; right? I mean,  
8 isn't that --

9 A That's my recollection, yes.

10 Q All right. And she said she was glad you  
11 accepted the position? Isn't that what she told  
12 you? She was happy; right?

13 A Those were her words, yes.

14 Q Right. I mean, so -- but now looking in  
15 hindsight, you are suggesting that when she  
16 expressed this happiness for you achieving this top  
17 position in City government and she expressed the  
18 desire for you to go out on top, that all the while  
19 she was intending to terminate you in two years? Is  
20 that what you are testifying here to today?

21 A I'm testifying here today that words are  
22 cheap and she could say anything, but the intent  
23 was, is that she was implying that she expected me  
24 to leave the position in a couple of years.

25 Q And why do you -- I mean, I'm just trying



1 to understand. You're saying that was her intent.

2 Why --

3 A That was what I interpreted her comments  
4 to mean, not on the day -- I didn't understand them  
5 on the day --

6 Q Right, right.

7 A -- that they were said.

8 Q Right.

9 A But they became more apparent over time.

10 Q Okay. So she was happy?

11 A She said she was happy.

12 Q All right. And did you believe she was  
13 happy?

14 A I had no feeling one way or the other.  
15 She said the words. I don't know if she was or not.

16 Q Well, she hired you; right?

17 A She hired me, yes.

18 Q She promoted you; right?

19 A Yes.

20 Q Highest position you ever held in the City  
21 government; correct?

22 A Yes.

23 Q Gave you a 10 percent raise; right?

24 A Required by Personnel.

25 Q Right, but she --

1           A       She didn't give me -- she didn't give me  
2       the raise. The raise was mandated by the fact that  
3       I was promoted two grades.

4           **Q       Did she have to approve the raise?**

5           A       Only from the standpoint that she had to  
6       have the money to pay for it.

7           **Q       All right. Did she approve subsequent**  
8       **raises outside of that initial 10 percent raise?**

9           A       No.

10          **Q       I'm sorry?**

11          A       No.

12          **Q       So you received no raise from twenty --**

13          A       I received no merit --

14          **Q       Excuse me. Let me finish.**

15          A       No merit increases.

16          **Q       Okay. Did you receive any increases?**

17          A       Only the personnel-mandated raise that all  
18       employees would get across the board.

19          **Q       All right. Did you -- do you recall**  
20       **anything else -- well, strike that.**

21                   This discussion that took place where she  
22       expressed gladness that you had accepted the  
23       position and expressed happiness that you would go  
24       out on top, who was present during that discussion?

25                   MR. BLANKE: Let me object to the

1           **Q**     You recognized that weakness on your part  
2     at that time?

3           **A**     Yes.

4           **Q**     All right. Other than that comment, that  
5     phone call with the Comptroller, can you identify  
6     any other information that you can provide to us to  
7     suggest to you that it was her intention when she  
8     hired you to get rid of you in a couple of years?

9           **A**     It is my feeling that I was brought in as  
10    a placeholder. I was put in the position because I  
11    was a logical best option choice to fulfill the role  
12    for a period of time until such point in time that  
13    she was able to promote whom she really wanted in  
14    that role.

15          **Q**     And whom would that be?

16          **A**     It would be someone that was more like the  
17    prior Deputy, a younger black female.

18          **Q**     And what I'm trying to get at is evidence.  
19    You say that's your belief, your suspicion. But do  
20    you have any evidence that you can share with us,  
21    any memos, any discussions with the Comptroller that  
22    you can share with us to support that belief?

23          **A**     Not at this time, but I possibly could  
24    recall something later.

25          **Q**     Okay. So not -- as we sit here today,

1     **January 21st, 2022, other than that comment -- which**  
2     **was a congratulatory call, right? It was -- would**  
3     **you describe that as a congratulatory call?**

4           A     It was an offer call, yes.

5           Q     **I'm sorry?**

6           A     It was the offer call where she called to  
7     offer me the position.

8           Q     **Okay. So she offered you a position.**

9                     **Now, in City government, there's elections**  
10    **every year or every four years or so; is that**  
11    **correct?**

12          A     Well, there's aldermanic elections every  
13    two years and there are -- depending on which  
14    City-wide official you're speaking of, they're  
15    for -- they're four-year terms.

16          Q     **Okay. And in the case of the Comptroller,**  
17    **four-year terms; correct?**

18          A     Yes, sir.

19          Q     **Okay. And you served at the pleasure of**  
20    **the Comptroller; is that correct?**

21          A     I'm not sure I understand what that means.

22          Q     **Well, if a new Comptroller had been**  
23    **elected the last election cycle, would you have**  
24    **automatically been entitled to remain Deputy**  
25    **Comptroller of Finance and Development?**

1           A     Yes. Deputy Comptroller is a Civil  
2     Service position unaffected by a change in the  
3     elected official.

4           Q     Okay. Got it. And so you also allege  
5     that you have been discriminated because you --  
6     against because you are a white male; is that  
7     correct?

8           A     Yes.

9           Q     All right. Who in the City can you  
10    identify discriminated against you because you are a  
11    white male?

12          A     Darlene Green.

13          Q     Anybody else in the City?

14          A     Not that I can think of at this point in  
15    time.

16          Q     Okay. Do you know Mr. Richard Frank?

17          A     Only from being in meetings with him.  
18    Like, I'm -- I'm not familiar with him other than in  
19    being in meetings with him.

20          Q     Well, you knew he was the Director of  
21    Personnel; right?

22          A     Yes, sir.

23          Q     All right. And he is a white male;  
24    correct?

25          A     Yes, sir.

1           Q     And did -- do you feel that he has  
2     discriminated against you because you are a white  
3     male?

4           A     I don't know.

5           Q     All right. You have alleged in your  
6     lawsuit that he was involved in a conspiracy to  
7     discriminate against you. Isn't that correct?

8           A     I'm not sure that I would characterize it  
9     as a conspiracy, no.

10          Q     Well, do you know why in your Complaint  
11     it's characterized as a conspiracy?

12          A     I would characterize it as complicit with  
13     the Comptroller to contrive a way to have me not in  
14     the position, yes.

15          Q     And why do you think Mr. Frank would be  
16     complicit in a plot to discriminate against you  
17     because you are a white man?

18          A     I don't know, sir.

19          Q     So as you sit here today, you don't  
20     know -- you -- you believe he was complicit, but you  
21     don't know why he would have been complicit? Is  
22     that your testimony?

23          A     That's correct.

24          Q     All right. What about Beverly  
25     Fitzsimmons? She is a white woman; correct?

1           A     Yes, sir.

2           Q     Do you think she has discriminated against  
3     you because you are a white male?

4           A     I don't know that.

5           Q     Okay.

6           A     I don't know that.

7           Q     All right. Do you know Judy Armstrong?

8           A     I do.

9           Q     All right. She is an African American  
10    female; is that correct?

11          A     Yes, sir.

12          Q     And do you believe that she has  
13    discriminated against you because you are a white  
14    male?

15          A     I don't know that. I can't say that. If  
16    she did, it could be in a way or in a manner that I  
17    am unaware of.

18          Q     Okay. So as you sit here today, to the  
19    best of your knowledge, she did not discriminate  
20    against you because you are a white male; correct?

21          A     To the best of my knowledge, that is  
22    correct.

23          Q     All right. What about Chana Morton? Do  
24    you think somehow she has discriminated against you  
25    because you are a white male?

1           A     Again, not that I'm aware of.

2           Q     **Okay. Do you know a Dr. Ishmael Ikpeama?**

3           A     Yes.

4           Q     **All right. Who is Dr. Ishmael Ikpeama?**

5           A     He is a former supervisor in the Internal  
6     Audit Division.

7           Q     **And he reported to you; correct?**

8           A     At -- for -- at a point in time, yes.

9           Q     **When you were Deputy Comptroller; correct?**

10          A     Not for the entire time.

11          Q     **For what period of time did he report you?**

12          A     I can't recall the exact dates, but I  
13     supervised Internal Audit for a period of time after  
14     the remaining supervisor left and before a  
15     replacement was hired.

16          Q     **Okay.**

17          A     And I can't tell you the exact dates. I  
18     don't remember.

19          Q     **Okay. Do you think Dr. Ikpeama would have  
20     discriminated against you because you were a white  
21     male?**

22          A     Not that I am aware of.

23          Q     **Do you think any of those individuals I  
24     mentioned would have discriminated against you  
25     because of your age?**



1           A       Is the question do I think they would, or  
2       did they?

3           **Q       Did they.**

4           A       Not that I'm aware of.

5           **Q       Not that you're aware of.**

6                   MR. NORWOOD: For the record, Peak --  
7       Ipema -- Ikpeama is I-K-P-E-A-M-A. Ishmael.

8           **Q       (By Mr. Norwood) Okay. And why do you**  
9       **believe that the Comptroller discriminated against**  
10      **you because you are a white male?**

11          A       She replaced me with a younger African  
12      American female.

13          **Q       And the basis for that belief is what?**

14          A       That's what happened.

15          **Q       Okay. So the mere fact that an African**  
16      **American woman obtained the position after you**  
17      **vacated it is what leads you to believe that**  
18      **Comptroller Green was discriminating against you**  
19      **based upon the fact that you're a white male. Is**  
20      **that your testimony?**

21          A       Yes, sir.

22          **Q       Any other basis other than the simple fact**  
23      **that there was an African American woman hired after**  
24      **you vacated that position?**

25          A       I don't understand the question. What --

1     **environment, in your view?**

2           A     The environment was not good.

3           **Q     I'm sorry?**

4           A     The environment was not what I would  
5     consider a good and positive working relationship.

6           **Q     What do you mean by that?**

7           A     From the time I was hired, I always felt  
8     my relationship and me personally was kept at arm's  
9     length from the Comptroller.

10          **Q     Okay.**

11          A     That I never shared her total and complete  
12     confidence and trust, and I never felt like I was  
13     part of her true inner circle of confidants and  
14     people that she felt comfortable around. I was  
15     never -- she never felt comfortable around me.  
16     There was always someone else -- we -- we had -- on  
17     one hand I can count the times that we met one on  
18     one. And as much as I tried and as much as I  
19     attempted to be the very best and perform at the  
20     very highest level, you know, I -- it was very hard  
21     to -- for me to -- to have any sense of comfort in  
22     her presence.

23                 In a group setting, I think that, you  
24     know, we both were okay and -- but, you know, praise  
25     was hard to come by. I think that I was tolerated,

1 and I think that it was very difficult for me  
2 because I enjoyed such a strong close personal  
3 working relationship with my former boss, Ivy  
4 Pinkston, and to go to one that I was treated with a  
5 certain aloofness that allowed me to, you know, feel  
6 that, you know, I'm never going to be at that same  
7 level that I had with my prior boss. And it just --  
8 I never enjoyed a close working relationship, a good  
9 personal relationship, a business professional  
10 relationship with -- with -- with Ms. Green.

11 **Q And so you weren't in this inner circle**  
12 **you identified; is that right?**

13 A Yes.

14 **Q And -- and did that cause you concern that**  
15 **you weren't in that inner circle, in your view?**

16 A I'm not sure the term would be concern.

17 **Q What would you use? What term would you**  
18 **use?**

19 A It was just the facts of the matter that I  
20 couldn't do anything about.

21 **Q Okay. Who was in this inner circle?**  
22 **Let's talk about that inner circle. You've got --**

23 A Well, surely -- surely her secretary, for  
24 one.

25 **Q Okay.**

1 A LaTaunia Kenner for two.

2 Q Okay.

3 A Judy Armstrong.

4 Q Okay.

5 A And I'm not sure who else, but that was --  
6 those were the people that she seemed to be most  
7 comfortable around. Perhaps Michele Graham that  
8 worked in her office --

9 Q Right.

10 A -- on the second floor.

11 Q Right. Were those capable and competent  
12 employees, in your view?

13 A I don't know their work.

14 Q I'm sorry?

15 A I don't know their work.

16 Q So you don't know if they were capable or  
17 comparable --

18 A It's not --

19 Q -- or capable or competent?

20 A It's -- it's not within my purview to know  
21 exactly what their responsibilities were as  
22 individual -- each individual that I mentioned, nor  
23 do I know specifically if they performed their work  
24 well or not.

25 Q Okay. Well, let's talk about the

1     **positions. Chana Morton. What -- what was her**  
2     **position as it related to the Comptroller?**

3           A     She was Ms. Green's secretary.

4           Q     **All right. Personal secretary; right?**

5           A     Yes, sir.

6           Q     **All right. And as the name implies,**  
7     **they're working together quite a bit; correct?**

8           A     Right.

9           Q     **All right. And then you mentioned**  
10    **LaTaunia Kenner. What was her position?**

11          A     She held a number of them in the office.

12          Q     **All right. Tell us about those.**

13          A     Well, I'm not sure what she did in all of  
14    them, but the last few months -- less than a year --  
15    that I was there, she actually worked for me in the  
16    role of an executive assistant. I -- I think that  
17    her -- I'm not sure what her title was, but she was  
18    assigned to me and moved over to 1520 Market office  
19    probably a year before I left.

20          Q     **Okay. And you mentioned Judy Armstrong.**  
21    **What was her position?**

22          A     I'm not sure of her title, but she worked  
23    basically as an assistant to Ms. Green.

24          Q     **All right. And these individuals worked**  
25    **directly with Ms. Green, is your understanding?**

1 A Yes.

2 Q All right. You didn't work as -- directly  
3 with Ms. Green. Is that your testimony?

4 A I did or I didn't?

5 Q Did not.

6 A She was my immediate supervisor.

7 Q I'm sorry?

8 A She is my -- she was my immediate  
9 supervisor.

10 Q Right. And did you work closely with her?

11 A I would not characterize it as such.

12 Q All right. How would you characterize it  
13 in terms of day-to-day work that you did and your  
14 interactions with her?

15 A I'm not sure that we could characterize my  
16 interactions with her day-to-day.

17 Q All right.

18 A I would say that my interactions with her  
19 90 percent of the time are interactions that I  
20 initiated and they were probably more weekly to  
21 bi-weekly.

22 Q Okay. And when you did intervene --  
23 interface with her during those weekly or bi-weekly  
24 meetings, were they cordial meetings?

25 A They were matter-of-fact meetings where I

1 was reporting progress or an achievement or needing  
2 direction or asking questions and guide -- and  
3 requesting guidance. They were very matter of fact.  
4 They were, Okay.

5 **Q Okay.**

6 A They were, Okay. This is what I did.  
7 This is what -- Okay. That's fine, you know. We  
8 achieved this. Oh, great. I need direction on  
9 this, I got it, and then that was it.

10 **Q Why were you reporting to her about the**  
11 **matters you were involved in? Why were you doing**  
12 **that?**

13 A Because as a regular part of my job, I  
14 kept her apprised of what was transpiring in the  
15 areas in which I supervised.

16 **Q And that was part of your duty, right, to**  
17 **make sure she knew what was happening with respect**  
18 **to the Comptroller's office; correct?**

19 A That's correct.

20 **Q And transactions involving the City that**  
21 **she would ultimately have to sign and approve;**  
22 **correct?**

23 A Yes.

24 **Q All right.**

25 A That's correct.

1           **Q**     Now, as a -- in the context of this  
2     disciplinary -- this pre-termination. Let's talk  
3     about the pre-termination. You received a letter  
4     from the Comptroller --

5           MR. NORWOOD: I'm sorry?

6           MR. BLANKE: I'm sorry. I didn't mean to  
7     speak. I spoke outside -- I -- I didn't mean  
8     to say anything. Go ahead. Sorry.

9           **Q**     (By Mr. Norwood) In the context of the  
10    pre-termination, you received a letter from  
11    Comptroller Green indicating that there would be a  
12    hearing set for pre-termination; is that correct?

13          A     I'm not sure who the letter was from.

14          **Q**     All right. What is your understanding of  
15    the pre-termination process?

16          A     I think, as I understand it, that you can  
17    choose or not choose to attend a meeting with your  
18    immediate supervisor whereby they would lay out the  
19    reasons why you would be terminated before you and  
20    you had the opportunity to respond, and then they  
21    would tell you that you no longer have a job down  
22    the road. A day or two later, you would get a  
23    letter saying, you know, we've decided that you no  
24    longer work here.

25          **Q**     Is it your understanding that the



1    **pre-termination process automatically leads to**  
2    **termination if whoever is bringing that process is**  
3    **successful?**

4           A     It's my understanding -- because I've  
5    never heard of a pre-term where the person wasn't  
6    terminated leads me to that conclusion.

7           Q     **Okay. So other than -- how many**  
8    **pre-terminations did you become aware of during your**  
9    **tenure?**

10          A     I think I had only participated in one or  
11   two.

12          Q     **Okay. Tell us about those one or two that**  
13   **you participated in.**

14          A     Well, one was -- actually, I was -- I'm  
15   not sure I've -- I've discharged, directly, an  
16   employee. I was there supporting a -- one of the  
17   supervisors that reported to me that had to  
18   discharge an employee. In one particular instance  
19   when I supervised a municipal garage, we had an  
20   employee who had a traffic accident, and when they  
21   did the required drop for drug testing, they came up  
22   positive. And since this had been a situation that  
23   it had occurred before, there was a positive test  
24   once before, that the supervisor, following the  
25   Personnel policies, went through the pre-term

1 procedure on that individual.

2 And another individual we had in the  
3 records retention area, the supervisor informed me  
4 that one of her employees threatened her. And using  
5 Personnel's guidance, that was cause for termination  
6 and -- and we -- I was there. I witnessed a  
7 pre-term hearing with that individual.

8 **Q Okay. You made reference to Personnel's**  
9 **guidance. What do you mean by that?**

10 A In terms of the actual level of offense,  
11 under 117, when the supervisor that worked for me  
12 presented the offense to the Department of  
13 Personnel, the guidance that they received was  
14 reflective of the severity of the infraction,  
15 meaning was this a -- a suspension type of offense,  
16 was this a -- a written reprimand type of offense,  
17 and where it did it fall within the progressive  
18 discipline of 117. In both cases, we were advised  
19 that these were dischargeable offenses that were  
20 causing us to do a pre-term.

21 **Q And -- and why would you engage Personnel**  
22 **in terms of guidance? What's the purpose of that?**

23 A To ensure that proper policy was followed,  
24 procedures, and that the City would be following its  
25 own rules. I mean, if we didn't follow -- we wanted

1 my vacation reinstated. I believe it was only  
2 through the fact that I had retained counsel that  
3 that was done.

4 Q But suffice it to say, it was done, and  
5 you got every nickel back. Can we agree with that?

6 A Yes. That's correct.

7 Q All right. And you were getting paid;  
8 correct?

9 A Yes, sir.

10 Q While you were at home; is that right?

11 A That's correct.

12 Q And when you brought counsel in, counsel  
13 filed certain appeals of the forced leave. You're  
14 aware of that; correct?

15 A Yes.

16 Q All right. And then ultimately, two of  
17 the forced leaves were rescinded; is that correct?

18 A And reinstated.

19 Q And reinstated; correct?

20 A Yes.

21 Q And the -- the last forced leave, which is  
22 the second one, was replaced with a pre-termination  
23 notice; correct?

24 A Yes.

25 Q And a hearing was set on that notice;

1 correct?

2 A Yes.

3 Q You had counsel to represent you; correct?

4 A Yes, sir.

5 Q You had the opportunity to present your  
6 case with respect to the allegations; correct?

7 A Yes.

8 Q And if you were unsuccessful at that  
9 level, you had an opportunity to appeal to the Civil  
10 Service Commission; correct?

11 A If that's the procedure, yes.

12 Q With very capable attorneys; is that  
13 right?

14 A I had attorneys, yes.

15 Q Okay. Do you know how the Civil Service  
16 Commission might have ruled on any appeals that you  
17 may have taken throughout this entire process?

18 A No.

19 Q I'm sorry?

20 A No, sir. I -- I -- I don't know how they  
21 would have ruled.

22 Q Did you have some sense that somehow the  
23 Civil Service Commission would have discriminated  
24 against you because you were a white male?

25 A The Civil Service Commission is made up of

1 mayoral appointees that have -- I mean, I don't -- I  
2 don't know who they -- who it would be. I have no  
3 idea who they are.

4 **Q Okay. Do you have any sense, though, that**  
5 **they would have discriminated against you?**

6 A No, I -- I don't know who they are, so I  
7 can't have a sense that they would do anything. I  
8 don't know. I don't know what they would do other  
9 than they would hear the case. I mean, I -- I have  
10 no sense of -- of who they would be, who -- who is  
11 even a Commissioner.

12 **Q Fair enough. From the time frame that you**  
13 **were put on forced leave on July 2nd, 2019 through**  
14 **your last date of service, which was September 30,**  
15 **2019, did you lose any pay or benefits during that**  
16 **time frame?**

17 A No.

18 **Q I'm sorry?**

19 A No.

20 **Q No. Do you know if the Comptroller's**  
21 **alleged failure to provide you with Civil Service**  
22 **ratings in 2016, 2017, 2018, do you know if that**  
23 **caused you to lose any benefits?**

24 A I'm not sure the two have any bearing on  
25 the other. I don't think one has any bearing on the

1 other.

2           **Q     Okay. Well, let me ask it this way: How**  
3 **were you harmed by the failure of Comptroller Green**  
4 **to give you service ratings in twenty six -- 2017,**  
5 **2018, 2019?**

6           A     The harm comes in the fact that you never  
7 know where you stand. You never know how your --  
8 how your performance is being viewed, where are the  
9 areas that you can do better, where are -- what are  
10 the things that you are deficient in or that you may  
11 have done exceptionally well. There -- there was no  
12 feedback at all.

13           **Q     Okay. Any financial harm that you can**  
14 **identify for us today?**

15           A     Any financial what? I'm sorry.

16           **Q     Financial harm.**

17           A     No, they're not -- they're not -- it's an  
18 apples and oranges thing. It's -- the only thing  
19 that -- that would tie a financial piece to not  
20 getting a service rating is, is if the City in the  
21 fiscal years that we were talking about were  
22 offering merit raises. You wouldn't be eligible for  
23 a merit increase if you had not gotten a service  
24 rating that was above meets standard.

25           **Q     Okay. So if I'm understanding, you're**

1 hoping would get better, but they're -- they're not.

2 And, you know, as this deposition  
3 approached and getting back into reliving and  
4 recounting the events that transpired during that  
5 period of time, it's kind of set me back a ways, if  
6 you will. And so I believe that that -- that that  
7 might be a good option for me, is to -- to seek some  
8 treatment in that regard, yes, sir.

9 **Q So as we sit here today, you have not**  
10 **sought out such treatment. Is that a fair**  
11 **statement?**

12 A I have not as of yet.

13 **Q All right. At the time you retired, how**  
14 **old were you?**

15 A Let's see. I was 66.

16 **Q All right. And when were you planning to**  
17 **retire before the forced leave and things of that**  
18 **sort?**

19 A That question was asked of me probably in  
20 March or April of 2019 by the Comptroller in the  
21 presence of the other deputy, Beverly Fitzsimmons.

22 **Q Okay. Let's talk about that meeting.**  
23 **Where -- this was, you say, May of 2019?**

24 A I think it was March or April.

25 **Q March or April of 2019?**

1           A       Not in this -- not on -- not on this  
2       subject matter. I think we may have had some -- a  
3       staff meeting or two there.

4           **Q       Okay. All right. So let's talk about**  
5       **this March 2019 meeting. Tell us about that. What**  
6       **do you recall about that meeting?**

7           A       It was designed to have the -- the  
8       Comptroller review and sign off on the budget that  
9       Bev and I jointly prepared for the office. And  
10      somewhere in the -- in the midst of the  
11      conversation, the Comptroller said that -- you know,  
12      that she was looking forward and was starting to  
13      make plans to run for another term. And that -- she  
14      looked at each of us and said, Can I count on your  
15      support? Will you -- will you be here? Will you be  
16      in these -- will you -- will you be there in these  
17      positions?

18                   And I said to her that I intended and I --  
19      and I could commit to -- that day to working full  
20      time through at least the end of her term, which  
21      would have been April of 2021, and then I wanted to  
22      assess, you know, health-wise and talk to my family  
23      and just take it year to year and commit on a  
24      year-to-year basis at that point in time. I had no  
25      plans to retire, but I told her that at what -- at



1 certain -- at some point in time, I would like to  
2 cut back and go to a part-time employment if that  
3 was allowable or possible with the office.

4 **Q Okay. So she asked you will you be there**  
5 **after the election? Is that what she was trying to**  
6 **gather, from your interpretation?**

7 A I -- I'm not sure what she was really  
8 asking. I think she was -- she may have been trying  
9 to find out if I was going to retire or not.

10 **Q But you don't know as you sit here today?**

11 A I don't know what her motives were, no.

12 **Q All right. And you had committed to work**  
13 **at least through the next term, if she were to be**  
14 **re-elected?**

15 A I committed to work at least through April  
16 of '21, and then I would like to -- I -- I said I  
17 would like to evaluate year to year based on health  
18 and what -- my family situation, how they were  
19 doing, in terms of making -- I wasn't making a  
20 four-year commitment, I was making a year-to-year  
21 commitment past April of '21, which would put her  
22 into the next term that she was hoping to and she  
23 was elected to; that I would -- I would be there,  
24 you know. I would make a one-year-at-a-time  
25 commitment and potentially, as I said, would like

1 to -- when I did want to give up the full-time  
2 status, if there was a way for me to play a role in  
3 the office on a part-time basis.

4 **Q Okay. After you resigned, did anybody**  
5 **tell you you couldn't work with the City on a**  
6 **part-time basis?**

7 A At that point in time -- I was not of the  
8 ability to work in any capacity at that point in  
9 time.

10 **Q Okay.**

11 A I -- I was just -- I don't know if you  
12 want to call it depression. I just didn't have it  
13 in my gut to want to come back in any way, shape, or  
14 form at -- at that point in time.

15 **Q Okay. And so -- but my question, sir,**  
16 **was: Has anyone from the City told you that you**  
17 **cannot work part time for the City?**

18 A Not that I can recall.

19 **Q All right. And so as far as you know, as**  
20 **you sit here today, you can still work part time for**  
21 **the City; correct?**

22 A Potentially.

23 **Q Okay.**

24 MR. NORWOOD: I believe our lunch is here.

25 Do we want to take a break until 1:00?

1 MR. BLANKE: Sounds fine.

2 MR. NORWOOD: How much time -- where are  
3 we in the scheme of things?

4 THE VIDEOGRAPHER: As in total time?

5 MR. NORWOOD: Total time, yes.

6 MR. BLANKE: It's 12:25 now. When did we  
7 take --

8 MS. McMILLEN: Do you want to go off?

9 MR. BLANKE: Are we off the record or are  
10 we on the record?

11 THE VIDEOGRAPHER: We're on.

12 MS. McMILLEN: Let's go off the record.

13 MR. NORWOOD: Let's go off the record.

14 THE VIDEOGRAPHER: This is the  
15 videographer. We're going off the record. The  
16 time now is 12:25.

17 (Off the record at 12:25 p.m.)

18 (On the record at 1:11 p.m.)

19 THE VIDEOGRAPHER: This is the  
20 videographer. We're back on the record. The  
21 time now is 1:11.

22 MR. BLANKE: Oh, I just thought I'd  
23 mention, he did not get a chance to finish his  
24 response. It's up to you what you want --  
25 about what happened at that March/April '19

1 meeting.

2 MR. NORWOOD: Okay.

3 MR. BLANKE: It was more that he was going  
4 to talk about, but I don't know --

5 MR. NORWOOD: All right. Are we back on?

6 So counsel, I believe you've indicated off  
7 the record that Mr. Garavaglia was -- wanted to  
8 finish a response about the March 2019 meeting?

9 MR. BLANKE: Yeah. I think he said March  
10 or April, I don't know.

11 MR. NORWOOD: March or April. Okay.

12 **Q (By Mr. Norwood) Go ahead, sir, if you**  
13 **have more to add.**

14 A Yeah, I -- I -- what I had said was -- I  
15 was asked about how long I intended to work, and I  
16 said full time for two years and then we'll take it  
17 year by year, and then potentially down the road,  
18 who knows. But when I said that, the Comptroller  
19 reacted by -- you know, she pursed her lips and she  
20 kind of looked down and then she started making  
21 notes.

22 When she asked -- when she looked back up  
23 and she asked Bev the same question, Bev said, Well,  
24 I've got the years of service that I could retire,  
25 but I don't -- I'm shy -- I -- I don't have the age,

1 so I don't have the years that add to the age to get  
2 me to 85. So she said, You got me for not only the  
3 next two years, but the entire next term of four  
4 years, to which the Comptroller looked at her and  
5 nodded approvingly and sort of gave it a bit of a  
6 smile.

7 Now, I know working for her long enough to  
8 know that what -- when I was saying what I was  
9 saying, she didn't like what she heard. Because she  
10 looked down and she kind of made a hmm, pursed her  
11 lips, and just started making notes. However, in  
12 contrast to what she heard Bev say, she seemed like  
13 that was what she was hoping to hear.

14 **Q Okay. All right. Let's unpack that a**  
15 **tad. So in this meeting, the one where she's asking**  
16 **both of you-all to commit -- well, will you be there**  
17 **in these positions. I think those were the terms**  
18 **used; right? That's what she asked you, Will you be**  
19 **there?**

20 A Well, no. The question was, Will you be  
21 able -- I'm going to run, what are your plans, not  
22 if we'll be there, but what are your --

23 MR. NORWOOD: Hold on a second. Hold on a  
24 second. Do we have -- hold on a second. Let's  
25 make sure. Hold on a second.

1           Madam Comptroller, we're -- we're getting  
2           back on the record.

3           MS. GREEN: Okay. Thank you.

4           Q     (By Mr. Norwood) Okay. All right. Let  
5           me -- let me re -- let me ask this question again.  
6           I want to go back, then, to the statement that she  
7           led with. Let's start with that. That is -- we're  
8           talking about the March or April 2019 meeting where  
9           by you, the Comptroller, and Bev Fitzsimmons were in  
10          attendance.

11                 So how did the -- who called the meeting,  
12          first of all?

13          A     I actually think Bev called the meeting,  
14          because it was -- we needed to sit down and talk  
15          about the budget with the Comptroller.

16          Q     Okay. So it was a -- is this a normal  
17          budget-type meeting, generally speaking, between the  
18          two deputies and the Comptroller? Did you-all  
19          typically meet --

20          A     Yeah.

21          Q     -- meet in that fashion?

22          A     Well, we didn't -- we didn't typically. I  
23          think we -- we met maybe a couple of times  
24          throughout process, yes.

25          Q     Okay. And somewhere -- you're talking

1     **about the budget. And as best you can recall,**  
2     **exactly what did she say and what did she do?**

3           A     She said that she planned on finalizing  
4     her plans if she was running again, and she was  
5     intending -- she was -- she was pretty sure that she  
6     was going to run again and --

7           Q     **This would have been -- excuse me. I**  
8     **don't mean to cut you off. But this is for the**  
9     **election in 20 --**

10          A     '21.

11          Q     **-- '21. Okay. All right. Go ahead.**

12          A     And that -- she was asking about what were  
13     our plans, you know. What -- what was, you know,  
14     our plans going to be, what would we be able to  
15     commit to in terms of our -- of our employment. And  
16     I said -- what I -- I think I've said it about four  
17     times, but I said I would be certainly -- can I go  
18     on?

19          Q     **No, no, no. I mean, I'm sorry. I don't**  
20     **mean to cut you off. I'm trying to make sure we get**  
21     **the precise words. Because I thought -- what I**  
22     **wrote down, it said that you -- she said, Will you**  
23     **continue to be there in these positions after I'm**  
24     **elected in 2021? Is that --**

25          A     Would you -- yes. Yes.

1           **Q     Okay. All right. So that's how --**

2           A     If I am -- if I run, which I'm leaning  
3     toward doing it, if I am elected, would you be in  
4     these positions -- would you be available to be in  
5     these positions? And my answer was as I previously  
6     testified to.

7           **Q     Okay. And then you said something about**  
8     **lips -- and let's talk about that.**

9           A     Well, when I was saying that, knowing her  
10    as I do, I know that she was displeased by what I  
11    said. Because she looked down, pursed her lips, and  
12    started making notes. Conversely --

13          **Q     Okay. Let's -- let's stop. Just -- we're**  
14    **going to get to converse.**

15          A     Okay.

16          **Q     Okay. Let's stay with verse, which is in**  
17    **response to you saying I'm planning to stick around,**  
18    **I'm in this through the next term, I might work part**  
19    **time afterwards, she looked down and wrote something**  
20    **down on a piece of paper. Did you see what she**  
21    **wrote down?**

22          A     No, sir --

23          **Q     All right.**

24          A     -- I did not.

25          **Q     All right. And you said something about**



1     **her lips. Tell me about her lips.**

2           A     Well, she just -- she pursed her lips.  
3     She -- you know, she -- it was like -- she just made  
4     a -- her facial expression was that's not what I was  
5     hoping to hear. I'm -- I'm --

6           Q     **So you don't know what she meant with**  
7     **whatever facial expression that you believe that**  
8     **you --**

9           A     But -- but I know her well enough to  
10    know --

11          Q     **Let me finish. Let me finish.**

12          A     -- that she didn't like what she heard.

13          Q     **Okay. Let me -- let me finish, just for**  
14    **the court reporter, because she is doing a great**  
15    **job.**

16          A     Okay.

17          Q     **But when we talk over each other, I don't**  
18    **think she has a special key for that.**

19                 **So let's go back. You said you know her**  
20    **well enough to know that a pursed lip means what?**

21          A     I said that I know her well enough that by  
22    her facial expression and the fact that she made the  
23    pursed lips and looked down, that she was displeased  
24    by what I said.

25          Q     **And do you know -- what is it about what**

1     **you said that displeased her?**

2           A     That I wanted to work. I wanted to keep  
3     working.

4           Q     **So that's what you believe? She didn't**  
5     **say that; right?**

6           A     That's what I believe, yes.

7           Q     **Okay. She didn't say that; is that**  
8     **correct?**

9           A     This is what I believe, yes.

10          Q     **She didn't say that; correct?**

11          A     She said nothing.

12          Q     **Right. She said nothing. Non-verbal**  
13     **communications that you interpreted in some negative**  
14     **way; is that correct?**

15          A     Yes.

16          Q     **All right. And then you said -- then she**  
17     **turned to Bev, and what did Bev say?**

18          A     Bev said that she had the number -- she --  
19     she had the -- the number of years of service, but  
20     she didn't have the age that would bring her up to  
21     the rule of 85, where she could be potentially  
22     eligible for full retirement. And so she said,  
23     You've got me. You've got me through the rest of  
24     this term and you've got me the whole next term,  
25     because I need to get to the rule and I'm -- you

1 know, I'll be here.

2 And at that point in time, the Comptroller  
3 looked up, looked at her, nodded approvingly, and  
4 partially smiled.

5 **Q And partial -- a partial smile?**

6 A Yeah.

7 **Q All right.**

8 A Meaning that she was glad to hear that, in  
9 my opinion.

10 **Q Okay. But she didn't say any of that;**  
11 **right?**

12 A She did not.

13 **Q And you interpreted the partial smile as**  
14 **an approval of whatever Bev Simmons (sic) was**  
15 **communicating to her; correct?**

16 A Yes.

17 **Q Did -- did she take notes when she gave**  
18 **that half smile?**

19 A Did not.

20 **Q All right. All right. And you took the**  
21 **fact that she didn't write notes as something**  
22 **like -- as what?**

23 A I didn't take it as anything. I --

24 **Q All right.**

25 A But I can tell you that based on her

1 facial expressions, what I said did not please her.  
2 What Bev said did.

3 Q All right. And did you take down her  
4 writing down, was that -- what did you interpret  
5 from that? She's writing down --

6 A I --

7 Q -- while she's --

8 A I didn't -- I didn't take anything from  
9 that.

10 Q All right. So just writing; right?

11 A I don't know what it was, yes.

12 Q All right. Fair enough.

13 MR. NORWOOD: Before we go forward, just  
14 for the record, we had talked about Exhibit 29,  
15 which were the documents related to his  
16 application for Deputy Comptroller, and we had  
17 identified the Bates numbers. So let me do  
18 that for you, counsel, so you can isolate those  
19 at your leisure. And those are STL000709  
20 through 725.

21 MR. BLANKE: Thank you.

22 MR. NORWOOD: You're welcome.

23 Q (By Mr. Norwood) We were talking about  
24 your direct reports and your annual ratings for  
25 those direct reports. Do you recall if you did, as

1 service rating. I'm not sure.

2 Q A service rating. So -- so for -- you did  
3 them for Anderson -- service ratings for Anderson,  
4 Kenner, Harrington, and also Ryan Coleman?

5 A Yes.

6 Q And all of your direct reports, is your  
7 testimony, correct, whoever those might have been?

8 A Yes.

9 Q And you would have been -- you would have  
10 rated it as a second person on everyone else in your  
11 group?

12 A That was not a direct report, yes.

13 Q All right. Let me hand you what has been  
14 marked as Garavaglia -- or Garavaglia Deposition  
15 Exhibit 30, if I could. Let me hand you a copy.

16 MR. NORWOOD: It's not labeled, so you'll  
17 have to write that. This is Exhibit 30.

18 Q (By Mr. Norwood) And -- and for the  
19 record, these are assorted documents that are Bates  
20 labeled STL with a number. So let's start with  
21 STL000707. And this is a letter from Comptroller  
22 Darlene Green to Mr. Richard R. Frank, Director of  
23 Personnel, dated May 20, 2016. Do you see that?

24 A Yes, sir.

25 Q And Comptroller Green starts by saying --

1     and I'll read it -- quote, Dear Mr. Frank, I would  
2     like to respectfully request that the Department of  
3     Personnel approve a 10 percent salary increase for  
4     Mr. Jim Garavaglia upon his promotion to Deputy  
5     Comptroller as of May 13, 2016.

6                     Do you see that?

7             A     I do.

8             Q     And it's your understanding that that  
9     would have been an automatic 10 percent increase?

10            A     Based on the Civil Service, it -- it's --  
11     it's in the -- whenever they do an ordinance -- the  
12     Department of Personnel does an ordinance which  
13     spells out salary titles and ranges of salary and  
14     also the rules that govern promotions, increases,  
15     demotions, suspensions, everything that you would  
16     need to know regarding and affecting someone's  
17     title, grade, or pay.

18            Q     Right.

19            A     I believe in that document, which is a --  
20     which is an ordinance that's passed, I don't know,  
21     annually by annually, it states in there what would  
22     happen if you were to be promoted by one grade, by  
23     two grades, but I don't believe in any instance you  
24     can be promoted from -- or you can be raised from  
25     more than three grades from where you currently are.

1 So it stipulates, I believe, in that ordinance that  
2 when you move someone two grades, that they get a  
3 10 percent increase. It's 5 percent per grade.

4 **Q Right. So in your view, then, she was**  
5 **required to send this letter to give you the**  
6 **10 percent salary increase? Is that your**  
7 **understanding?**

8 A I'm not sure she was required to, but it  
9 may have happened automatically. Once you put me in  
10 the position, it may have happened automatically.  
11 I -- I think maybe they -- Personnel requested her  
12 to write the letter. I don't know.

13 **Q All right. So as you sit here today, do**  
14 **you know if she had not written this letter, whether**  
15 **or not you would have got a 10 percent salary**  
16 **increase?**

17 A I don't know that I wouldn't.

18 COURT REPORTER: That you wouldn't?

19 A I don't know that I wouldn't have gotten  
20 it anyway.

21 COURT REPORTER: Thank you.

22 **Q (By Mr. Norwood) Or would not have gotten**  
23 **it anyway; right?**

24 A No. I said I'm not sure, because, again,  
25 the ordinance that -- that covers Personnel policy

1 regarding pay grades, titles, promotions, demotions,  
2 and what happens when you promote someone one grade  
3 or two grades, in the ordinance, if she did not --  
4 you know, in other words, if -- if I did not get the  
5 10 percent raise, she would be technically in  
6 violation of an ordinance.

7 **Q That's your understanding?**

8 A That's my understanding.

9 **Q All right. And so if she had not sent**  
10 **this letter and recommended a 10 percent salary**  
11 **increase -- salary increase, do you know whether or**  
12 **not you would have received that salary increase, is**  
13 **my question?**

14 A I believe I would, by -- by virtue of the  
15 fact that Personnel is going to follow their own  
16 ordinance.

17 **Q Got it. All right. Let's go to the next**  
18 **page, which is a letter dated June 6th, 2016, STL**  
19 **document number STL000708. It appears to be a**  
20 **letter dated June 6, 2016 from Mr. Frank to**  
21 **Darlene Green. Have you seen this letter before?**

22 A I don't think so.

23 **Q All right. Based upon your review of the**  
24 **letter, does it appear that in response to**  
25 **Ms. Green's letter dated May 20, 2016, that he is**



1     **approving the increase at 10 percent?**

2           A     Yeah. What he's doing is he's referencing  
3     the section, I believe, of the ordinance that  
4     governs this, that Section 6(1) -- a dash 1. I  
5     believe that's what that is in -- in the ordinance  
6     that that -- in Section 6 of that ordinance. I  
7     believe that's what he's referencing.

8           Q     **So he's approving her request for the**  
9     **10 percent increase that you would have**  
10    **automatically gotten anyway? Is that your**  
11    **testimony?**

12          A     I think that's how it works, yes.

13          Q     **All right. Let's go to the next page,**  
14    **which is STL000698, and ask you if you've seen that**  
15    **document before.**

16          A     I probably have this document, because  
17    when you receive an increase, there is a copy that  
18    goes to the employee.

19          Q     **Okay. And in the middle of -- and this --**  
20    **it has your name on it? This is from your Personnel**  
21    **file; is that correct? Is that what you understand?**

22          A     Yes.

23          Q     **All right. And it says Reason For Data**  
24    **Change, it says, quote, Promotion to Deputy**  
25    **Comptroller, and then open paren, 10 percent**

1 of this, so let me kind of go to my literal and  
2 figurative highlights. In paragraph 6 on page 2,  
3 you state that, Defendant Green is an African  
4 American female. That's part of it. And you also  
5 say Defendant Green is being sued in her official  
6 and individual capacities.

7 Do you see that?

8 A Yes.

9 Q What do you believe Ms. Green did in her  
10 individual personal capacity as it relates to  
11 this -- as it relates to what you claim is unlawful  
12 discrimination?

13 MR. BLANKE: Objection. I think that  
14 calls for a legal conclusion on the part of the  
15 witness, who probably doesn't understand the  
16 difference between individual and official  
17 capacity in the first place.

18 Q (By Mr. Norwood) Okay. Subject to that,  
19 do you know what that meant when you allege that you  
20 were suing her in her personal capacity?

21 A I did not.

22 Q Do you -- can you identify anything that  
23 she did to you personally outside of her capacity as  
24 Comptroller that caused you the stuff that you claim  
25 was caused --

1 MR. BLANKE: Same --

2 Q -- by her actions?

3 MR. BLANKE: Same objection.

4 A Not at this --

5 MR. BLANKE: Calls for a legal conclusion.

6 That's the objection. Go ahead. I'm sorry.

7 Q (By Mr. Norwood) Subject to that.

8 A Not at this point in time.

9 Q All right. Let's look at paragraph 13.

10 You say -- you allege, quote, Defendant Green placed  
11 Plaintiff on forced leave with the intent of  
12 auditing him in order to obtain and prepare a  
13 pre-textual reason to justify Plaintiff's  
14 termination and/or with the intent to harass  
15 Plaintiff and induce him to retire or resign so that  
16 she could replace Plaintiff as Deputy Comptroller  
17 with a younger African American female employee.

18 Did I read that correctly?

19 A Yes, sir.

20 Q And you -- we had talked about the  
21 evidence. The only evidence you have on that is the  
22 fact that Comptroller Green hired a younger African  
23 American female; right?

24 A No.

25 Q What else do we got?

1     forced leave --

2           **Q     Right.**

3           A     -- that you -- and at that point, because  
4     whatever investigation she decided that she needed  
5     to put together, it was not complete or she didn't  
6     have enough to go to a pre-term, and so she extended  
7     me on another forced leave.

8           **Q     Okay. Well, why would she have waited**  
9     **until she had enough goods on you before she would**  
10    **have placed you on forced leave? Do you have a**  
11    **theory on that?**

12          A     I don't know -- I -- I have no idea what  
13    happened to me on the 2nd of July.

14          **Q     Okay.**

15          A     I was given no explanation. I was put out  
16    the door with no explanation other than be told,  
17    They'll let you know.

18          **Q     And who told you that?**

19          A     Judy Armstrong.

20          **Q     All right.**

21          A     Not the Comptroller.

22          **Q     Right. Okay. And so --**

23          A     And you know -- let me just add one more  
24    thing. The 2nd of July is very important, and the  
25    reason it's important is it's the beginning of the

1     fiscal year. I don't think there was any  
2     coincidence about the fact this action was taken to  
3     coincide with the beginning. It's out with the old  
4     and in with the new. And I -- I believe that this  
5     was a concerted plan to replace me one way or  
6     another. If I didn't retire, I was going to go. I  
7     was put out the door. There was not the evidential  
8     facts to sustain my ultimate demise at the time I  
9     was put out the door, and so the extensions kept  
10    occurring with this forced leave in order for her to  
11    build some kind of potential case that was meant to  
12    be substantial enough to sustain the challenge that  
13    I may mount at Civil Service.

14               Because the pre-term is a foregone  
15    conclusion. The whole thing was orchestrated and  
16    put together to get me out, and there was no time  
17    like July 2nd, the beginning of a fiscal year. And  
18    I believe that the -- that the whole process was  
19    accelerated by the fact of the meeting that we spoke  
20    about just earlier today in -- in that March/April  
21    time frame.

22               Once I told her that I was going to  
23    continue to work, I wanted to work, and I was going  
24    to be there, it didn't fit into her long-range plan  
25    to replace me with a black younger female. That was

1 the ultimate plan, because I had replaced a black,  
2 younger female. And for appearance purposes, she  
3 had a problem. She had two white deputies. I was  
4 the interim solution.

5 I believe that she was pressured in the  
6 community that you had a black deputy for  
7 20-something years, you promoted a white woman to  
8 replace a white man and the other job in accounting  
9 services. Now, that position, I believe, was to be  
10 restored to an African American woman, and I was put  
11 in the position until such point in time as that  
12 person who ultimately got the job was deemed  
13 necessarily ready to step up and assume that role  
14 and title.

15 Q And that is your belief; correct?

16 A That is my belief.

17 Q All right.

18 A That is, in my opinion, exactly how it  
19 came down.

20 Q All right. And you don't have any  
21 evidence to support that belief other than what  
22 you've already testified to; right?

23 A That's correct.

24 Q All right. And so she promoted you for  
25 the purpose of firing you in two years, three years;

1     aware of the fact that Ivy was gone, I was there.

2           **Q     Well --**

3           A     That's just one anecdotal example.  If you  
4     read The American or if you -- if you looked in the  
5     paper or if you, you know, had any idea of what was  
6     going on in City government, you would know that.

7           **Q     I would know what?**

8           A     That Ivy had died --

9           **Q     Right.**

10          A     -- and that she had been replaced by a  
11     while male.

12          **Q     Right.  And so it was known -- commonly**  
13     **known that you had replaced an African American**  
14     **female?**

15          A     That's correct.

16          **Q     And what I'm trying to figure out is how**  
17     **are you surmising that from her standpoint that she**  
18     **was having a problem with that?  What evidence do**  
19     **you have of that?**

20          A     By the mere fact that from the very time I  
21     was hired, as we said -- as I testified earlier, she  
22     only expected me to be in the position -- I was a  
23     placeholder for a period of time.  She said it to  
24     me.  And subsequent to that, she asked me about it  
25     in the March/April time frame just before this whole

1 series of events took place.

2 Q She never said you were a placeholder;  
3 right?

4 A Nope, but it was very much obvious to --  
5 to me in looking at the situation after this all  
6 unfolded.

7 Q Okay. So this is sort of an after the  
8 fact, the lightning bolt hit you that from the  
9 get-go, she was going to find a way to get rid of  
10 you after promoting you and giving you a raise in a  
11 couple years; is that right?

12 A The series of events that I described and  
13 I testified to didn't make sense on a  
14 mutually-exclusive basis, but once I'm on forced  
15 leave and I'm sitting at home with a lot of time on  
16 my hands, I was able to put this together in my  
17 head.

18 Q And the public pressure. Who -- who, I  
19 mean, is there any names you can give the Court or  
20 the jury about who are these "they" that is putting  
21 pressure on the Comptroller to get rid of a white  
22 male who was her dep -- deputy?

23 A I can't at this time, no.

24 Q Okay. Do you know if those same eyes and  
25 those same public community felt the same way about



1           A     Yes.

2           Q     All right. So you believe that the two of  
3     them -- to the extent that they went along with what  
4     you suggest was a charade because of their evil  
5     motive and willful, wanton, malicious, outrageous  
6     conduct?

7           A     Well, the question you asked me is how did  
8     the City do this, and my answer was by endorsing  
9     and -- and com -- and being com -- in -- in, I  
10    guess, agreement with what the Comptroller was  
11    doing.

12          Q     Right. But I'm trying to -- what I'm  
13    trying to drill down on is this intentional,  
14    willful, maliciousness. That -- that's what I'm  
15    trying to understand. Other than what you have  
16    described here today, do you have anything else to  
17    suggest that the actions of those other players was  
18    willful, wanton, malicious, outrageous? Anything  
19    else you can add for this record today?

20          A     Not at this point in time today.

21          Q     Not at this point in time. All right.

22                 And as to Comptroller Green, what is it  
23    that you believe was intentional, willful, wanton,  
24    malicious, outrageous, with evil motive and reckless  
25    indifference?

1           A       I believe that she needed me out -- she  
2       needed me to be out of the job and she was taking  
3       whatever steps necessary to do that.

4           **Q       Got it.**

5           MR. BLANKE: Is this a good time? I've  
6       got to go to the bathroom.

7           MR. NORWOOD: That's fine. We'll take a  
8       break.

9           THE VIDEOGRAPHER: This is the  
10       videographer. We're going off the record. The  
11       time now is 2:05.

12               (Off the record at 2:05 p.m.)

13               (On the record at 2:21 p.m.)

14           THE VIDEOGRAPHER: This is the  
15       videographer. We're back on the record. The  
16       time now is 2:21.

17           **Q       (By Mr. Norwood) Mr. Garavaglia, let's**  
18       **turn to Deposition Exhibit 2, if we could. What is**  
19       **Deposition Exhibit 2?**

20           A       This is my filing of -- of a charge of  
21       discrimination before the Missouri Commission on  
22       Human Rights.

23           **Q       Okay. And this is -- was your position**  
24       **submitted to the EEOC regarding what you believe**  
25       **transpired with respect to your employment; correct?**

1           A     Yes, sir.

2           Q     And other than what you have testified to  
3     here today, is there anything else -- well, I'll  
4     withdraw that question.

5                     Let me look at the last paragraph on  
6     page 2 of Exhibit 2.

7           A     Okay.

8           Q     You say, quote, There is a clear pattern  
9     and practice of discriminatory treatment of  
10    non-black, older, and male employees by the  
11    Comptroller.

12                    What -- outside of what you already  
13    testified to, do you have anything else to offer  
14    about this clear pattern and practice of  
15    discriminatory treatment of non-black, older, and  
16    male employees by the Comptroller?

17          A     I'm not sure I understand what you're --  
18    what you want me to tell you.

19          Q     Well, I want for you to tell me the truth;  
20    right? I want you to tell me what you meant when  
21    you said to the EEOC, There is a clear pattern and  
22    practice of discriminatory treatment of non-black,  
23    older, male employees by the Comptroller.

24                    What did you mean when you wrote that --  
25    when you can communicated that to the federal

1     **government?**

2           A     I'm speaking about myself. And you look  
3     at the fact that I was hired, I was told -- or I was  
4     asked -- you know, I was told how long I was, you  
5     know, hopefully going to have a couple years that I  
6     could go out on top as a -- as a -- as a deputy. I  
7     was -- I was more or less kept at arm's length. I  
8     wasn't part of her inner circle. I wasn't, you  
9     know, part of the long-term plan, if you will.

10           If you look at the March/April meeting and  
11    subsequently what happened, I mean, it's -- it's  
12    pretty much -- I was a placeholder. And I think  
13    that, again, you look back on -- on -- on that, and  
14    that's pretty much what this is about.

15           **Q     But you didn't say that in your statement.**  
16    **You said clear pattern and practice of**  
17    **discriminatory treatment of non-black, older, male**  
18    **employees.**

19           **So what other Es do you -- can you share**  
20    **with us that have been discriminated against for**  
21    **being non-black, older, white males?**

22           A     The context of that sentence -- I'm not  
23    sure what I was thinking of at the time. I'd like  
24    to reserve the right to come back and -- and maybe  
25    answer that fully. I can't -- I can't --

1           **Q     Okay.**

2           A     It's not coming to mind what I was  
3     referring to at that point.

4           **Q     All right. So you can't identify for us**  
5     **today any other non-black, older, male employees?**

6           A     It's not coming to mind.

7           **Q     All right. Did it come to mind when you**  
8     **submitted this to the EEOC at the time under oath?**

9           A     Evidently I -- I could recall it then --  
10    I -- I'm just not recalling it.

11          **Q     Okay. Let me direct your attention to**  
12    **Garavaglia Exhibit 3. And these documents have a**  
13    **Bates stamp that has your name and a number 1 on the**  
14    **first page. Do you see that?**

15          A     Yes.

16          **Q     All right. And then if you turn to the**  
17    **third page, there's a document entitled Respondent's**  
18    **Statement of Position in Response to Charge of**  
19    **Discrimination.**

20                **Do you see that?**

21          A     Yes.

22          **Q     Have you seen that document before?**

23          A     Yes. This is the response that was  
24    submitted to the EEOC in relation to my charge  
25    letter.

1           Q     All right. Let's turn to page 4 of the  
2 document. It's Garavaglia 6. In this statement, it  
3 says, quote, Based on the advice of counsel, the  
4 Comptroller rescinded Complainant's original  
5 administrative leave on July 18, 2019 and  
6 reinstituted a second administrative leave process  
7 that same day, which included the additional new  
8 information as to Complainant's fiscal  
9 irregularities ascertained as part of the internal  
10 audit process.

11                     Do you see that?

12           A     Yes.

13           Q     And my question to you: Do you know if  
14 the reason for the recision had to do with advice  
15 she received from counsel?

16                     MR. BLANKE: That he received?

17                     MR. NORWOOD: That she received.

18                     MR. BLANKE: She received.

19           A     No. I -- I just read this at its face  
20 value. I have no idea what -- what that means.

21           Q     (By Mr. Norwood) So with respect to the  
22 statement, though, my question to you is: Do you  
23 know if the reason she did it is because she had  
24 advice to suggest that that's what she should do?

25           A     I have no idea why.

1           A       I do.

2           Q       All right. Let's take a look at that. It  
3       says, quote, There are some actions which are so  
4       serious that progressive discipline is inappropriate  
5       or insufficient and, therefore, immediate --  
6       immediate dismissal is warranted.

7                   Do you see that?

8           A       Yes.

9                   MR. BLANKE: You know, this is your time,  
10       you can spend it however you want, but you're  
11       wasting your own time, because we've spent like  
12       10 or 15 minutes now just reading an  
13       administrative regulation into the -- into the  
14       record.

15                  MR. NORWOOD: Agreed.

16           Q       (By Mr. Norwood) Continuing. Listed  
17       below are examples of actions which may be  
18       exceptions to progressive discipline.

19                   Do you see that?

20           A       I do.

21           Q       All right. Let's flip over a couple of  
22       pages to the last page, which is Garavaglia 26. Do  
23       you see that?

24           A       Yes.

25           Q       There's a bullet point. It says,

1 Violating any of the provisions of the City's Code  
2 of Conduct.

3 Do you see that?

4 A Yes.

5 Q And then the next item says, Falsification  
6 of time records or other official City records.

7 Do you see that?

8 A Yes.

9 Q And so based upon that, you understand,  
10 then, that those violations could result in  
11 immediate termination; correct?

12 A Yes.

13 Q All right. If we continue on in that same  
14 stack -- it's Garavaglia 28 -- we have a document  
15 that says Employee Code of Conduct.

16 Do you see that?

17 A Yes.

18 Q And you were familiar with that because  
19 you reviewed it annually and signed off on the fact  
20 that you did; correct?

21 A That's correct.

22 Q All right. And it starts by saying,  
23 quote, We recognize that City employees have a  
24 responsibility to various groups: The public,  
25 public officials who represent the public, their



1           A     I do.

2           Q     All right. You understand that was one of  
3     your responsibilities as well; correct?

4           A     Yes, sir.

5           Q     All right. And then Records and  
6     Communications. It says, quote -- in the second  
7     paragraph of that section, same page -- Employees  
8     must not make any misleading representations or  
9     falsify any record or engage in any false  
10    communication of any kind. Is that correct?

11          A     That's what it says.

12          Q     Whether internal or external, including,  
13    but not limited to making or filing any false  
14    reports, attendance, production, financial, or  
15    similar reports and statements. Is that correct?

16          A     Yes, sir.

17          Q     All right. Let's go to the next page,  
18    Garavaglia 33. Honesty. City employees should be  
19    completely honest in their dealings with the public,  
20    elected officials, appointing authorities,  
21    supervisors, and fellow employees.

22                   Is that a correct reading of that?

23          A     Yes.

24          Q     It says, quote, Lying in any form,  
25    omitting some facts, or exaggeration undermines the

1     fundamental trust that must exist between employer  
2     and employee and has no place in public service.

3             Did I read that correctly?

4             A     You did.

5             Q     Penalties on the same page. Any violation  
6     of this Code of Conduct will subject the violator to  
7     disciplinary action up to and including dismissal.

8             Did I read that correctly?

9             A     Yes, sir.

10            Q     Let's turn to Garavaglia tab 4, Deposition  
11   Exhibit 4. No. Better yet, let's turn to tab 5,  
12   which is Garavaglia Deposition Exhibit 5.

13            Do you see that?

14            A     Number 105?

15            Q     I'm sorry. Yeah. Page 105. Exactly.

16            A     Okay.

17            Q     All right. Have you seen this document  
18   before?

19            A     Yes.

20            Q     It looks like it's a memo from Comptroller  
21   Darlene Green to Nancy Kistler, Deputy City  
22   Counselor. Do you see that?

23            A     Yes.

24            Q     In there, it says, quote, At the June 19,  
25   2019 E&A meeting, I became aware of an e-mail sent

1 by Jim Garavaglia to Beverly Fitzsimmons to place an  
2 item on the agenda when Mayor Krewson read aloud the  
3 e-mail thread.

4 Do you see that?

5 A I do.

6 Q And you were at that meeting where that  
7 occurred; correct?

8 A I was.

9 Q And do you know where the mayor obtained  
10 the e-mail that she read aloud at that particular  
11 meeting?

12 A I believe he got that from  
13 Bev Fitzsimmons.

14 Q You believe who got it from Mayor --

15 A The mayor's office received that Bev  
16 Fitzsimmons.

17 Q Okay. And she says, This is my first time  
18 hearing about the e-mail Jim sent.

19 Do you see that?

20 A I see it.

21 Q Do you know if that's accurate?

22 A It is not.

23 Q It is not -- okay -- in your view. It  
24 says, This is important, because I didn't realize  
25 Jim had initiated the request for an extension of

1 item to be placed on the agenda. I knew generally  
2 that the request for extension was -- for an  
3 extension was coming because Jim had mentioned it to  
4 me earlier in the month. However, I was not fully  
5 apprised of the situation, including a pending  
6 default.

7 Do you see that?

8 A I do.

9 Q Do you know if she was apprised of the  
10 situation, including the pending default?

11 A Can I speak to the issue?

12 Q Absolutely.

13 A Okay. I agree with Ms. Green's comment  
14 that I became aware of the request coming for an  
15 extension from the developer because they were  
16 having problems once again with getting their  
17 finances in order --

18 Q Okay.

19 A -- to move forward with the project.

20 Q Okay.

21 A So just as it says here, I advised her  
22 that this was coming, it would be on a request to  
23 put on the agenda shortly. On the 14th of June,  
24 which was a Friday, I routinely sent the request to  
25 Bev Fitzsimmons, who does the agendas for E&A,

1 saying this is tentatively an item that we want to  
2 put on. I spoke to Ms. Green. At the time I spoke  
3 to her, she didn't have any problem with it being on  
4 the agenda.

5 **Q When did you speak to Ms. Green?**

6 A Prior to the 14th.

7 **Q Prior to that Friday? Yes?**

8 A Prior to the 14th. Some -- sometime, as  
9 she states here, earlier in the month, possibly that  
10 week. Since that was a Friday, possibly that week.

11 **Q Okay.**

12 A And I sent the request -- tentative  
13 request. And -- and what that means when I say  
14 tentative request is she assembles all of the items  
15 to be placed -- Bev -- this is Bev Fitzsimmons. And  
16 then what she does is she then sends them to the  
17 president and the mayor's office to see if there's  
18 any objections to any of the items.

19 Okay. So she's doing that. And in the  
20 interim, here comes Monday, and Monday is -- I  
21 believe that's the 17th. Things start changing.  
22 The environment is changing regarding this  
23 particular request. And what's happened is -- is  
24 that, number one, I became aware -- later confirmed  
25 by an e-mail to Bev -- that for whatever reason the

1 president's office was asking us not to put it on  
2 the agenda.

3 Q Okay.

4 A I'm not aware of why, but -- so I had some  
5 concerns about our ability to get this bill -- or to  
6 get this item on the agenda and to have it receive  
7 at least two votes, since the president's office  
8 wasn't on board.

9 Secondly, because the developer in a prior  
10 meeting/phone call readily admitted that they owed  
11 back taxes, that was a concern, and -- and daily, I  
12 was calling. I didn't have to do a tax clearance  
13 request, as this will tell you was a shortcoming on  
14 my part. I didn't have to do that. I was making  
15 phone calls down to the Collector of Revenue's  
16 office daily to see if the money had come in.

17 So now I don't know if I've got the votes.  
18 I've got a problem with the tax clearance. And then  
19 all during this time period, Bev is calling me and  
20 e-mailing me, Have you talked to the Comptroller  
21 about this? Have you got -- have you gotten the  
22 approval from the Comptroller? I've got to put out  
23 my agenda. I've got to go. I've got to get this  
24 done.

25 Q Right.

1           A     And I'm -- I'm saying to her, no, I  
2     haven't called her, because I don't have clarity on  
3     what we were going to do. The last thing I'm going  
4     to do is place an item on the agenda that I know is  
5     not going to get a second or will fail to get the  
6     votes necessary to pass.

7           **Q     Right.**

8           A     I'm not about to place the Comptroller or  
9     our office in a position to be embarrassed by the  
10    fact that we didn't do our homework and know ahead  
11    of time that it was going to be approved at that  
12    meeting.

13          **Q     Right.**

14          A     So I've got concerns. I've got two  
15    concerns, not sure I had enough votes, and the fact  
16    that we still had taxes owed on the 17th.

17          **Q     Right.**

18          A     Later that day on the 17th, a third  
19    problem happens, and that is --

20          **Q     Now, let me -- let me backtrack. I just**  
21    **want to make sure you're clear. So you're saying by**  
22    **the 17th, you understood there was no tax clearance;**  
23    **is that correct?**

24          A     I'm calling down there and asking if the  
25    taxes are paid.

1           **Q     Okay.**

2           A     I'm not going through the manual writing  
3     up a tax clearance request, because I know the  
4     answer by picking up the phone.

5           **Q     Right, right, right.**

6           A     So by this point in time, we -- on the  
7     afternoon, I think --

8           **Q     The afternoon of?**

9           A     -- of the 17th, which is a Monday --

10          **Q     Okay.**

11          A     -- somehow or other, the mayor's office  
12     knows that we are having -- we're having some  
13     hesitancy in making this be a final item agenda  
14     item.

15          **Q     Right.**

16          A     And we -- and I -- I think what happened  
17     was because both sides were represented, their  
18     attorney, Roger Denny with Spencer Fane, called our  
19     attorney, Tom Ray, and basically said I've been  
20     talking to the mayor's office, and they're willing  
21     to put this on if the Comptroller isn't. And he let  
22     me know that. And the first thing the next day, Bev  
23     is -- is sending me an e-mail, have you got the  
24     Comptroller? I've got to get this out. Have you  
25     talked to her yet? And now I've got the third



1 problem. Now the mayor is in the act of wanting to  
2 put it on the -- on the agenda.

3 Q Right.

4 A I said to her, No, I have not, but I will  
5 in my e-mail. You'll find that somewhere in this  
6 chain of e-mails --

7 Q Right, right, right.

8 A -- that I said, No, but I will. I then  
9 called the Comptroller and I explained to her that  
10 we didn't have -- I wasn't sure about where the  
11 president was, but now the mayor's office wants to  
12 put it on anyway. And I said, What do you want me  
13 to do? Do you want me to send them the paper -- the  
14 paperwork for -- to put it on the agenda? And she  
15 said, No, send it to me.

16 Q Right.

17 A At this point, I want to look at it,  
18 because this is -- the Comptroller is telling me,  
19 directing me to send this item to her, because I  
20 want to take another look at this. You know, now  
21 that -- now that we've gotten to this point, I want  
22 to look at this project again. I've got to ask some  
23 questions. Send it to me.

24 I said, Yes, ma'am. I did that, called  
25 Bev, and said, We're not putting it on. The

1 Comptroller has asked that the item be sent to her.

2 Q Okay.

3 A At that point in time, taxes had not still  
4 been paid.

5 Q Right.

6 A I still was unaware that we had another  
7 vote, but it didn't matter, because the Comptroller  
8 the pulled it and said, Send it to me. It's not  
9 going to the mayor's office. I don't know if she  
10 was going to make a decision to put it on in  
11 conversation with Bev or not, but I've been stood  
12 down.

13 Q Right.

14 A And she -- Bev then -- whatever happened  
15 between her and the Comptroller I was not party to  
16 at that point in time.

17 Q Okay.

18 A Now, what happens next --

19 Q Well, let me stop -- let me stop you  
20 there. We're going to get to the next, but I want  
21 to make sure we get this in context.

22 So let's go to Garavaglia page 107, Bates  
23 stamped page 107 and 108. Do you see those pages?

24 A Where would that be noted? Oh, I see it.  
25 It's -- it's --

1           Q     109.

2           A     Yeah, I see that.

3           Q     All right. So let's go through the -- the

4     e-mails. The first one is an e-mail from you dated

5     Friday, June 14 --

6           A     That's --

7           Q     -- 2019?

8           A     That's what I spoke of just a second

9     ago --

10          Q     Right.

11          A     -- where I sent her --

12          Q     Right.

13          A     -- that information.

14          Q     Right. Okay. And that's at -- let me

15     finish.

16          A     Yep. Okay.

17          Q     At 10:53 a.m.; correct?

18          A     Yes.

19          Q     And this is an e-mail from you to Bev, who

20     is responsible for helping to assemble that agenda;

21     correct?

22          A     That's right. That's right.

23          Q     All right. And you say, quote, Here's

24     that extension we talked about for E&A. Thanks.

25                 Do you see that?

1           A     Yep.

2           Q     All right. And then she responded to you  
3     at 11:21 a.m. that same day, Friday, June 14, 2019,  
4     and she says, You did run this by the Comptroller  
5     before we do this; right? That's what she asked  
6     you; right?

7           A     And again --

8           Q     No, no, no. Let -- let's answer my  
9     question.

10          A     All right.

11          Q     Okay?

12          A     Sure. Go ahead.

13          Q     That's what she responded to you some  
14     30 minutes later when you said let's place this item  
15     on the agenda; correct?

16          A     On the tentative agenda, yes.

17          Q     Okay. On the tentative agenda. All  
18     right. You did run this by the Comptroller before  
19     they do this. That's why she asked you that; right?

20          A     As I stated before, not on the day of the  
21     14th.

22          Q     No, no, no, no.

23          A     But prior to this, yes.

24          Q     I'm talking about today.

25          A     That day, no. And there -- and there's a

1 reason for it.

2 Q Well, no, no. We're going to get into the  
3 reason for it, but I just want to get what we've  
4 got.

5 A Okay. As of that point, I -- I -- I  
6 answered the question. Did not.

7 Q You did not. Why was she asking  
8 whether or not -- why was it important for her to  
9 have it run by the Comptroller? Why is that  
10 important?

11 A Well, because anything that goes on the  
12 agenda is approved by the Comptroller. The final  
13 agenda is approved by the Comptroller.

14 Q It has to be approved by the  
15 Comptroller --

16 A That's right.

17 Q -- your boss; correct?

18 A That's right. That's exactly right.

19 Q All right. All right. And your -- my  
20 words, not yours -- terse response is, Did not?

21 A That's not a terse response. It's a --  
22 it's a reply.

23 Q Okay. Did not. You did not is what you  
24 responded to Bev; right?

25 A You're -- you're adding something that

1     isn't there.

2           **Q     All right. I'm not going to add anything.**

3           **Did not. That's there; right?**

4           A     Yeah. I just -- I said no, did not.

5           **Q     No, you said, Did not.**

6           A     Did not. I --

7           **Q     You didn't say no.**

8           A     Yeah, Did not.

9           **Q     Did you explain why?**

10          A     Yeah, because --

11          **Q     No, in the e-mail.**

12          A     No.

13          **Q     You didn't explain why in the e-mail?**

14          A     No.

15          **Q     Okay. All right. And that was your --**

16          A     I was clear I didn't.

17          **Q     Your -- well, we just want to make sure**  
18 **the record and the video is clear.**

19          A     Yeah. Okay.

20          **Q     We're at 12:04 p.m. on Friday, June 14th.**

21 **You say, Did not. And Bev responds some 29 minutes**  
22 **later on that same day, Please run it by her first.**

23 **I just got off the phone with her, so she is not**  
24 **here, but around.**

25               **That's what she responded; correct? Is**

1     **that correct?**

2           A     That's correct.

3           Q     All right. And that was on Friday. Then  
4     the next e-mail is on a Monday and -- 9:28 a.m., Bev  
5     is sending you an e-mail, First response...what did  
6     the Comptroller say? Is that right? Did I read  
7     that right?

8           A     You did.

9           Q     All right. And then there's an e-mail  
10    from Mary Ries, it looks like. She is in the -- she  
11    is -- her title, it says, Legislative Director for  
12    President Lewis Reed, Board of Aldermen; correct?

13          A     Yes.

14          Q     And then it says, At this time, we would  
15    prefer not to have this item included on the  
16    upcoming agenda.

17          A     This --

18          Q     Do you see that?

19          A     This is a confirmation of what I found and  
20    learned verbally through a separate conversation.

21          Q     Okay.

22          A     Yes. This confirms -- this confirms what  
23    I had stated earlier.

24          Q     All right. It looks like there's an  
25    e-mail on the bottom of that on Friday, June 14,

1     **2019 at 10:59 in response to your e-mail.**

2           A     No. It's not in response to me.

3           Q     Oh, okay. Well, it says, Would like to  
4     **add the attached to the agenda. Another extension**  
5     **for the muni courts development.**

6                     **That's what you were referring to in your**  
7     **e-mail; right?**

8           A     Nope. This is her e-mail to the  
9     president's office.

10          Q     No. I'm saying in your original e-mail,  
11     **here's the extension we talked about for E&A.**  
12     **Thanks.**

13          A     Yes.

14          Q     Are we referencing the same --

15          A     Yes. That's the document.

16          Q     -- item?

17          A     Yes.

18          Q     The same project?

19          A     I misunderstood you. Yes.

20          Q     Which is the muni court project?

21          A     Yes. That's correct.

22          Q     All right. All right. Let's go to the  
23     **next page. Tuesday, June 18, 2019 at 8:29 a.m.**  
24     **It's an e-mail to you from Beverly Fitzsimmons; is**  
25     **that correct?**



1 A Yes.

2 Q All right. And she says, Extending on  
3 E&A. Quote, You had told me she was okay with this;  
4 right? Who is the "she"? She being Comptroller  
5 Green; correct?

6 A I am assuming, yes.

7 Q She told me she was not. Did you work  
8 this out with her yesterday? That's what she --  
9 Bev asked you; right?

10 A Right. Okay.

11 Q And you responded, same day, 10 minutes  
12 later, 8:39 a.m., Tuesday, June 18, 2019 -- and just  
13 to put this in context, Tuesday, June 18, 2019, was  
14 the day that the agenda had to be finalized and  
15 posted in order for any item to be considered at the  
16 June 29 E&A meeting; right?

17 A That's right. We were getting close to  
18 deadline. That's right.

19 Q All right. So we're close to deadline?

20 A Yes, we are.

21 Q Running up to the wire; right? What time  
22 usually is that agenda finalized?

23 A Well, it's got to be pushed and -- and  
24 posted 24 hours in advance of the meeting, which is  
25 usually 2:00.

1           Q     So it's got to be craft, it's got to be  
2     reviewed, it's got to be posted by 2:00 that  
3     afternoon?

4           A     Yeah. That's right.

5           Q     All right. In your response to Bev, you  
6     said I didn't talk with her about it, but I will;  
7     right?

8           A     That's correct.

9           Q     So we've got Friday, Saturday, Sunday,  
10    Monday, you hadn't talked to her about it?

11          A     But I explained and just testified as to  
12    why.

13               MR. BLANKE: But he's not asking about  
14    that yet.

15               MR. NORWOOD: Yeah. I'm not asking about  
16    that.

17               MR. BLANKE: If he doesn't want to know  
18    the answer, then he doesn't get to learn the  
19    answers.

20               MR. NORWOOD: That's right.

21               MR. BLANKE: So just answer his questions.

22               MR. NORWOOD: That's right. That's  
23    exactly right. Thank you, counselor.

24          A     So --

25          Q     **(By Mr. Norwood)** So --

1 A -- what was the question?

2 Q -- the question was: We're at Tuesday,  
3 D-day, 8:39 a.m --

4 A Okay.

5 Q -- when the agenda is to be posted for  
6 this muni court item, and you still hadn't talked to  
7 your boss about it; correct?

8 A At that point, no, I had not.

9 Q All right.

10 A But I -- look what I said. But I will.  
11 It's not like I was purposely avoiding.

12 Q I understand, but --

13 MR. BLANKE: He doesn't want your  
14 explanation.

15 Q (By Mr. Norwood) -- over all of those  
16 days, why didn't you explain to your boss what was  
17 going on?

18 MR. BLANKE: Are you talking about Darlene  
19 Green?

20 Q (By Mr. Norwood) Darlene Green. That was  
21 your boss; correct?

22 A Yeah. What -- what I --

23 MR. BLANKE: Now -- now you can answer.

24 Q (By Mr. Norwood) Now you can answer.

25 A What was I -- I could not tell her,

1 because I did not have a clarified answer to give  
2 her. Number one, I did not know if we had the  
3 votes. Number two, the taxes were still unpaid.  
4 Number three, the mayor -- the -- the mayor's office  
5 had received a runaround blindside from their --  
6 from the developer's attorney if they would  
7 entertain putting it on the agenda rather than the  
8 Comptroller's office, because we hesitated because  
9 we didn't see -- I didn't see that we had the votes,  
10 and I knew, from making daily calls to the Collector  
11 of Revenue, that taxes were still outstanding.

12 **Q Okay.**

13 A We weren't going -- we weren't going  
14 nowhere. And, no, I did not have the clarif -- the  
15 clarification and the clarity to pick up the phone  
16 and call the Comptroller and tell her exactly what  
17 we needed to do.

18 **Q Well --**

19 A I didn't have it then.

20 **Q Well, but didn't you have the clarity to**  
21 **know what you didn't know so that you could let your**  
22 **boss what you didn't know -- let her know what you**  
23 **didn't know?**

24 A I would have made no sense to her on the  
25 phone because I would have been babbling about three

1 different things, all of which would have made no  
2 sense to her. In other words, when I talk to  
3 Ms. Green, I want to be concise, precise, and  
4 accurate, and I would not have been able to do that  
5 because the sand was shifting below our feet with --  
6 with what was happening with this item with the  
7 developer's attorney going and doing a complete  
8 around the corner on us to the mayor's office. The  
9 taxes weren't paid. And why Lewis Reed didn't even  
10 want it on the agenda, I couldn't break through.

11 And the fourth thing is that we now  
12 understood or it was rumored that there was a  
13 lobbyist that was working both the mayor and the  
14 president for their votes to make sure that it was  
15 going to get on the agenda and be passed.

16 Normally in a situation like this, I pick  
17 up the phone and I can talk to the developer, but  
18 this developer chose to be represented, and because  
19 of that, we are rep -- we were represented, then by  
20 Spencer Fane, us by Armstrong Teasdale. Therefore,  
21 I was advised by our attorney that you cannot speak  
22 to them without me being on the line. Whether  
23 that's true or not from a legal point of view,  
24 that's what happened.

25 And so we didn't have the ability to have

1 realtime conversation, where I could pick up the  
2 phone and say, What are you doing? I had to go  
3 through our attorney, who had to get to their  
4 attorney or to get to someone else in this equation.  
5 So it was very unclear. And I'm not going to call  
6 my boss and give her information that's either not  
7 accurate or that is unclear until I knew exactly  
8 what was going on.

9 **Q Well, you knew the taxes hadn't been paid.**  
10 **You knew that on Tuesday; right?**

11 A Yeah.

12 **Q You knew that on Friday, didn't you?**

13 A As of that day, yeah, I knew it.

14 **Q Right. And you -- you -- but you didn't**  
15 **feel the need to pick up the phone to apprise your**  
16 **boss that the taxes --**

17 A I didn't have all the facts.

18 **Q Well, you had that fact; right?**

19 A I didn't have all the facts. I didn't  
20 have what I needed --

21 **Q Well, hold on. Hold on. Let's --**

22 COURT REPORTER: Hold on, guys.

23 **Q (By Mr. Norwood) Stop. Stop. Let's**  
24 **stop. Let's break this down. I'm talking about one**  
25 **fact. Let's talk about taxes. You knew on Friday**

1     **the taxes weren't paid. Can we agree with that?**

2           A     But that's one -- that's one small thing.

3           **Q     No, I understand. And I'm going to focus**  
4     **on this one small thing --**

5           A     Okay.

6           **Q     -- and we'll get to the other thing. You**  
7     **knew on Friday, the 14th, the taxes weren't paid;**  
8     **right?**

9           A     But it's being alleged that I didn't know.

10          **Q     You knew, though, so --**

11          A     But it's being alleged here that I didn't.

12          **Q     You knew; right?**

13          A     Yes, sir.

14          **Q     But you didn't tell your boss on Friday;**  
15     **correct?**

16          A     That's correct. I was working the  
17     problem.

18          **Q     I got you. You were working the problem**  
19     **and therefore you didn't feel the need to**  
20     **communicate to your boss that the taxes weren't**  
21     **paid, which meant that the item couldn't go on the**  
22     **agenda; right?**

23          A     I was working the problem.

24          **Q     The --**

25          A     I was -- I was trying to handle the

1 situation. Okay?

2 **Q You knew that without the taxes being**  
3 **paid, the item couldn't be placed on the E&A agenda.**  
4 **You knew that; correct?**

5 A And I was waiting for a cure call. I was  
6 waiting for the call that they had cured the problem  
7 and -- and waiting up to the very end of the time  
8 period allowable that they could have come down and  
9 paid those taxes. Had I gotten that green light  
10 there, then the next thing I had to worry about  
11 was -- was do we have the votes. When that's  
12 cleared, then the next thing we had a problem with  
13 is they had done an end around to the mayor's  
14 office.

15 MR. NORWOOD: And I'd like to move to  
16 strike all of that, because that's not  
17 responsive to my question, sir.

18 MR. BLANKE: I disagree.

19 MR. NORWOOD: Let me finish. My  
20 question --

21 MR. BLANKE: You just don't like the  
22 response.

23 MR. NORWOOD: No.

24 **Q (By Mr. Norwood) My question is a simple**  
25 **one. You knew on Friday that there was no tax**



1     **clearance; correct?**

2           A     Yes.

3           Q     You knew on Friday that you didn't tell  
4     **your boss there was no tax clearance; correct?**

5           A     This is asked and answered at least three  
6     times now.

7           Q     **Correct?**

8           A     I'll answer it once (sic) more time. I  
9     did not advise her at of that point in time.

10          Q     **At that point in time. And you didn't**  
11     **advise her on Monday; correct?**

12          A     I did not at that point in time, no.

13          Q     **All right. Because you hadn't talked to**  
14     **her; right?**

15          A     I was trying to get the problem solved.

16          Q     **I understand.**

17          A     I was going to give her the complete, full  
18     story. I wasn't going to give her piecemeal  
19     information. She's not -- she -- she's not a  
20     favorable -- she doesn't like that. You want to  
21     give her the whole story or don't -- you know, just  
22     don't give it to me in pieces.

23          Q     **All right. All right. So you weren't**  
24     **going to give her any pieces until you had all of**  
25     **the pieces; is that right?**

1           A     I wanted to give her a complete, accurate  
2     situational report, yes.

3           **Q     And at what point in time did you finally**  
4     **get enough pieces assembled so that you could give**  
5     **her a complete and accurate report?**

6           A     At the time I called her on Tuesday  
7     morning -- and, again, I called her -- I'm watching  
8     the clock, too. I know what the -- what the time  
9     limits are.

10          **Q     Right. Right. Right.**

11          A     I gave her a call and basically said we've  
12     reached a point of impasse where now the mayor's  
13     office is trying to hijack this item. Do you want  
14     me to let them do it? She said, No. Send it to me.

15          **Q     When you say hijack this item -- what do**  
16     **you mean hijack this item?**

17          A     We had placed it on the tentative agenda.  
18     When they saw --

19          **Q     Well, let me back up. Who is we? Who**  
20     **placed it on the agenda?**

21          A     The Comptroller's office. Me. I gave it  
22     to Bev from the developer to place on the tentative  
23     agenda on the 14th.

24          **Q     Okay. So the "we" is me, meaning Jim**  
25     **placed the item on the agenda?**

1           A     After speaking with the Comptroller  
2     earlier that week and having her concurrence that  
3     she was in favor of it and that it was okay. So to  
4     say that I didn't talk to the Comptroller about this  
5     item -- I didn't talk to her on the day that the  
6     question was asked. I talked to her earlier that  
7     week and she was in favor and said okay.

8           **Q     Well, you didn't say that in your e-mail**  
9     **to Bev. You didn't say Bev, I haven't talked to her**  
10    **today, but I talked to her earlier in the week. You**  
11    **didn't say that, did you?**

12          A     Well, we had phone conversations as well  
13    as e-mail, so I may have. I don't know that. I  
14    don't remember that specifically. But in addition  
15    to the e-mails, she called me, like, every couple of  
16    hours.

17               MR. BLANKE: Who?

18               THE WITNESS: Bev.

19          **Q     (By Mr. Norwood) Okay. So Bev called you**  
20    **every couple -- because she said does your boss know**  
21    **what's going on; right?**

22          A     And at that point I didn't have something  
23    to report to her.

24          **Q     Right. But Bev is concerned -- you know**  
25    **Bev. You've worked with Bev. She's concerned that**

1     **she hasn't apprised you-all's respective boss of**  
2     **what's going on with this item.**

3           A     She may have been concerned in that  
4     regard, but she's more concerned about the fact that  
5     her sole locked-in goal is to get out the agenda.  
6     That's what she's concerned about.

7           Q     **All right.**

8           A     All she's -- all she's worried about is  
9     making sure the agenda goes out.

10          Q     **All right. Let's go to the next item,**  
11     **Garavaglia Deposition Exhibit 6. And to put this in**  
12     **context -- ultimately it was not presented and**  
13     **placed on the June 19, 2019 E&A agenda; correct?**

14          A     It was not.

15          Q     **Right. It was not. And the reason it was**  
16     **not was because --**

17          A     The Comptroller said, Send it to me, I  
18     want to look at it and consider this project and get  
19     more details about it.

20          Q     **Well, and at the time you talked to her,**  
21     **the taxes hadn't been paid; right?**

22          A     At that point in time, no, they hadn't  
23     been paid.

24          Q     **Right. So you're not going to place an**  
25     **item on the agenda at 2:00 on the 18th knowing that**

1       **there was no tax clearance?**

2           A       Cut-off would have been noon.

3           **Q       Well, noon. I'm sorry.**

4           A       Noon on the 18th was the cut-off. They  
5       were not paid at that point.

6           **Q       And you would not place an item on the**  
7       **agenda without having that confirmation of tax**  
8       **clearance; correct?**

9           A       Yes, sir.

10          **Q       Because it would have been a waste of**  
11       **E&A's time and it would have been embarrassing for**  
12       **your office to have that happen; correct?**

13          A       And it was --

14          **Q       Is that a yes? Let's start with the**  
15       **correct --**

16          A       The answer is yes.

17          **Q       Okay.**

18          A       But it also puts pressure on the developer  
19       to pay the damn bill.

20          **Q       Well -- and that's a good thing; right?**

21          A       That's -- that's -- that's exactly right.

22          **Q       All right. Now, let's look at, then,**  
23       **Garavaglia Deposition Exhibit 6, which is a memo**  
24       **from Chana Morton dated July 12, 2019 to Nancy**  
25       **Kistler. Do you see that?**

1           A     I do.

2           Q     Now, ultimately, it was a special meeting  
3     held the following Monday, I believe?

4           A     The 24th, correct.

5           Q     24th. All right. And it was at that  
6     meeting where it was -- the taxes were finally paid;  
7     correct?

8           A     No. The taxes were actually paid  
9     somewhere on the morning of the 19th.

10          Q     All right. So they had been paid by the  
11     24th, is the point?

12          A     That's correct.

13          Q     All right. So now we've got enough to go  
14     forward and have the item approved by E&A, and it  
15     was approved by E&A; correct?

16          A     That's correct.

17          Q     All right. So now was there a deadline in  
18     which all of this stuff had to happen --

19          A     The.

20          Q     -- during that week?

21          A     The approval was not necessarily a  
22     deadline, but, as we all know, the document --  
23     extension document had to be signed and in the  
24     register's office by 5 p.m. on Friday, the 28th.

25          Q     All right. So did you consider that a

1     **deadline?**

2           A     That's what I'm saying. That is the  
3     deadline.

4           **Q     All right. Friday, the 28th, is the**  
5     **deadline; right?**

6           A     5 p.m.

7           **Q     Right. And you were going on vacation**  
8     **that week; correct?**

9           A     Yes, I was.

10          **Q     And when did you -- what was your last day**  
11     **in the office?**

12          A     It would have been the 26th.

13          **Q     And that would have been a Wednesday?**

14          A     That's correct.

15          **Q     All right. So you were on vacation**  
16     **Thursday, Friday. Where did you go?**

17          A     I went to Morgantown, West Virginia for my  
18     granddaughter's first birthday.

19          **Q     Okay. And how long were you on vacation?**

20          A     I was gone Thursday, Friday, and Monday.

21          **Q     All right. In the meantime, this thing**  
22     **had to be finalized --**

23          A     Absolutely.

24          **Q     -- by Friday at 5 p.m.; correct?**

25          A     That's -- that's right.

1           Q     All right. Now, this incident report  
2     prepared by Chana Morton, have you reviewed this  
3     before?

4           A     Yes.

5           Q     Do you have -- do you dispute any of  
6     the -- the -- the --

7           A     I dispute most of it, yes.

8           Q     Most of it? All right. Let's go through  
9     it, then. It says at 3:28 p.m. -- this is under  
10    Wednesday, June 26th, 2019.

11                   First of all, did you have a conference  
12    call with the Comptroller on Wednesday, June 19,  
13    2019?

14          A     Yes.

15          Q     Tell us about that.

16          A     Well, let me -- I will -- I will, but let  
17    me tell you --

18          Q     Well, let me -- let me -- let's talk about  
19    it, because I'm -- I'm running out of time here.  
20    You see, your lawyer is beating on me. I want to  
21    focus on what I want to focus on and he'll have time  
22    to talk to you ad nauseam.

23          A     All right. What's the question, again?

24          Q     Let's talk about the meeting or conference  
25    call or discussion on Wednesday, June 26th, 2019.



1                   **What happened on that day?**

2           A       I can't answer it without some -- some  
3 context. I have to give you the context.

4           **Q       You were there.**

5           A       I understand that, but I have to give you  
6 the context as to why the -- why the call was even  
7 necessary.

8           **Q       Well, let's talk about -- when did the**  
9 **call take place? Let's start with the basics.**

10          A       I'm not sure.

11          **Q       Sometime that day?**

12          A       Yes, sir.

13          **Q       Sometime before you left for vacation?**

14          A       That's right.

15          **Q       All right. And who was on the call?**

16          A       The Comptroller, myself, Tom Ray, and I  
17 believe my administrative assistant, Sheila Woods.

18          **Q       Okay. And what was the purpose of the**  
19 **call?**

20          A       The purpose of the call was to make sure  
21 that we had a plan in place to expeditiously handle  
22 the documents when they arrived from the  
23 inter-office mail.

24          **Q       Okay. Well, let's talk about that. Why**  
25 **were the documents in the inter-office mail?**

1           A       Well, that's good -- I'm glad you asked  
2       that question. Because when the -- when E&A passed  
3       the item on the 24th, I was expecting to get the  
4       final version from the developer through his  
5       attorney on the 25th. At that point in time --  
6       well, it didn't -- it didn't happen. They didn't  
7       come. I called. It didn't come. Tom Ray calls,  
8       We're working on it. Okay.

9                   They did not come to us. I was advised --  
10      as I think it says somewhere in these documents, I  
11      received a call from the mayor's secretary on the  
12      morning of the 26th that the developer's attorney,  
13      Mr. Denny, instead of following the procedure and  
14      protocol which he had followed for the previous four  
15      times we did extensions, he brought the documents  
16      directly to the mayor's office for the mayor's  
17      signature. That's the second blindside where he  
18      went around our office directly to the mayor's  
19      office.

20           Q       Okay.

21           A       Okay. The mayor signs the documents.

22           Q       All right.

23           A       And Sheri goes, What do you want me to do  
24      with them? And I said, Send them to me in the  
25      inter-office mail. I'll get them by the afternoon.

1 And there's a very important reason for that.

2 Q Okay.

3 A The reason being is, before I wanted them  
4 to present -- be presented to the Comptroller's  
5 office and to the Comptroller for signature, I  
6 wanted to personally review them and I wanted the  
7 City's attorney to personally review the documents,  
8 because I'm not going to send anything to the  
9 Comptroller that I haven't seen or that our attorney  
10 hasn't seen.

11 Q All right. But my question to you is:  
12 These are important documents; right?

13 A Yes.

14 Q We've got a deadline; correct?

15 A Yes.

16 Q You're going on vacation; correct?

17 A Correct.

18 Q Why are the documents in the inter-office  
19 mail? Why weren't they personally couriered around  
20 to get the requisite signatures --

21 A Because normally --

22 Q -- let me finish first --

23 A Okay. All right.

24 Q -- to get the requisite signatures? Why  
25 send it through inter-office mail instead of having

1     **it couriered around to get it done before you go on**  
2     **vacation?**

3           A     Because I wanted to ensure of the accuracy  
4     and content of what was being sent around.

5           Q     **And you could have done that if it were**  
6     **couriered to you from the mayor's office; correct?**

7           A     By putting -- it could have happened that  
8     way, but what I had them do is I had them put it in  
9     inter-office mail, because normally if you put it in  
10    the mail in the morning, I get it in the afternoon  
11    run. I would have had it by 2:00.

12          Q     **Generally?**

13          A     Generally speaking, yes.

14          Q     **But people go to lunch, people take smoke**  
15    **breaks, people don't show up sometimes; right?**

16          A     Yes. That's -- that's -- that's what  
17    happened.

18          Q     **Okay. And you made the decision to put it**  
19    **in inter-office mail to you -- correct -- to come to**  
20    **you? That was your decision? That was your call;**  
21    **correct?**

22          A     It was my decision to do that, yes.

23          Q     **All right. All right. Let's go back to**  
24    **Chana's memo, where she says at 8:38 p.m. (sic) on**  
25    **Wednesday, June 26th, 2019, I received an e-mail**

1 from Tom Ray of Armstrong Teasdale.

2 Was that unusual for Mr. Ray to reach out  
3 like this --

4 A No.

5 Q -- to Chana --

6 A No.

7 Q -- and the Comptroller?

8 A No, not at all.

9 Q Not unusual at all?

10 A No.

11 Q Okay. In the e-mail, Please see  
12 attachment. Mr. Ray stated, quote, There might be a  
13 problem tomorrow, unquote. Because Jim received a  
14 call from the mayor's office, Sherry Wibbenmeyer,  
15 regarding the Municipal Court's 5th amended (sic)  
16 documents stating that the documents had been signed  
17 by the mayor.

18 Tom Ray, the lawyer -- right? He's a  
19 lawyer -- indicated in his e-mail that instead of  
20 asking Sherry to walk the documents to our office  
21 for the Comptroller's signature, which is the normal  
22 process --

23 A It is not.

24 Q Let -- let me finish. Jim instructed  
25 Sherry to send the documents to him via the use of

1     **inter-office mail; right?**

2           A     That's not the normal process.

3           Q     **Okay. So -- so what was the normal**  
4     **process?**

5           A     The normal process would be that the  
6     documents would be delivered to me at 1520. They  
7     would be reviewed by me, by our counsel, and then  
8     sent to City Counselor's office for approval as to  
9     form.

10          Q     **How -- how would they be delivered to you**  
11     **in the normal process?**

12          A     Usually electronically from the developer  
13     or the developer's attorney.

14          Q     **All right. So that's pretty quick.**  
15     **Electronic transmission?**

16          A     Yep.

17          Q     **What about delivery? Have you received**  
18     **couriered documents in that fashion?**

19          A     Oh, yeah. Absolutely.

20          Q     **All right. I mean, particularly for**  
21     **important, time-sensitive documents; correct?**

22          A     Yeah, that's right. That's right.

23          Q     **All right. And -- and -- and then the**  
24     **third option is this inter-office mail business,**  
25     **which is pretty slow, generally speaking; right?**

1           A     No, no. I -- I --

2           **Q     Well, let me say this --**

3           A     If you put it in in the morning, you  
4     should have it in the afternoon.

5           **Q     All right. It's slower than e-mail;**  
6     **correct?**

7           A     These -- evidently these documents were  
8     not -- we did not have these documents  
9     electronically. It would have been -- if he would  
10    have listened -- if the attorney for the other side  
11    would have done what he was requested of, he was  
12    supposed to electronically and in hard copy present  
13    the documents to me and Tom Ray on the 25th. He  
14    didn't do that.

15          **Q     All right. But in any event, with those**  
16    **options -- you didn't have electronic copy?**

17          A     Did not.

18          **Q     And you decided to chance it on the normal**  
19    **inter-office mail system; correct?**

20          A     It's not a chance. It's -- it -- normally  
21    that's how -- it works fine.

22          **Q     All right. And did it work fine in this**  
23    **instance?**

24          A     It did not. No, it did not.

25          **Q     Well, why not? What happened?**

1           A       I don't know.

2           Q       **You have no idea?**

3           A       I have no idea.

4           Q       **Whose responsibility was it to make sure**  
5       **that this all got done before you went on vacation?**  
6       **It was your responsibility; right? Let's -- can we**  
7       **agree with that?**

8           A       Well, it was our document, yes.

9           Q       **It was your document and your**  
10       **responsibility, because this was your job; correct?**

11               MR. BLANKE: Well, let me object. You're  
12       just arguing with the witness.

13               MR. NORWOOD: I --

14               MR. BLANKE: Everything he answers you  
15       disagree with and argue with him. That's  
16       not --

17               MR. NORWOOD: Well, let me --

18               MR. BLANKE: That's not cross-examination,  
19       that's argument.

20               MR. NORWOOD: Well, let's make it  
21       cross-examination.

22           Q       **(By Mr. Norwood) It was your**  
23       **responsibility, Mr. Garavaglia, isn't that true?**

24               MR. BLANKE: It doesn't matter how soft or  
25       loud you are --



1 MR. NORWOOD: Okay.

2 MR. BLANKE: -- it matters what you're  
3 saying, and you're arguing.

4 MR. NORWOOD: Thank you, counselor.

5 MR. BLANKE: You're arguing with him.

6 MR. NORWOOD: That's a speaking objection.  
7 If you have an objection --

8 MR. BLANKE: Objection, argumentative.

9 MR. NORWOOD: Thank you.

10 **Q (By Mr. Norwood) Sir, subject to that**  
11 **argumentative objection, this was your**  
12 **responsibility; correct?**

13 A It's the responsibility of whose item it  
14 is, and it was my item, so, yes.

15 **Q Okay. Okay.**

16 A Okay. Now --

17 **Q No. Let me -- no. Let me -- let me --**  
18 **let me finish, because I'm -- the clock is ticking**  
19 **on me, so I've got to keep moving.**

20 MR. BLANKE: But you're also not allowing  
21 him to answer fully.

22 MR. NORWOOD: I don't have a question for  
23 him. He answered my question.

24 MR. BLANKE: But he's not answering the  
25 question you're asking because you're cutting

1           him off.

2                   MR. NORWOOD: Well, you -- well, you can  
3           answer -- have him correct me when I'm wrong.

4           **Q        (By Mr. Norwood) So your decision, your**  
5           **responsibility. Documents, for whatever reason, got**  
6           **lost in the inter-office mail; right?**

7           A        I don't know that they got lost, but they  
8           didn't arrive at my destination in a timely manner.

9           **Q        Didn't arrive the afternoon you were**  
10          **leaving for vacation?**

11          A        No. They did not arrive until the  
12          morning -- oh, I'm not sure that they -- no, I'm not  
13          sure -- let's see. When does she say they arrived?

14          **Q        Well, take a look at it.**

15          A        I'm not sure that they arrived -- let's  
16          see. Let's go back here and look.

17          **Q        Well, let me ask you this: When you had**  
18          **this conversation with the Comptroller and Tom Ray**  
19          **and the others you identified, did we know at that**  
20          **time the whereabouts of these documents?**

21          A        We did not have them yet, no.

22          **Q        Okay. And did we know where they were?**

23          A        They were in the inter-office. That's --  
24          that's --

25          **Q        Somewhere in the inter-office system?**

1           A       That's correct.

2           Q       All right. So let's talk about, then,  
3       that conference. Tell us about that. What -- who  
4       said what and what was going on that day?

5           A       My recollection is not crystal clear on  
6       that. I know that we talked about it. The  
7       Comptroller wanted to know where they were. I  
8       couldn't answer that. I didn't have them. They  
9       were in the -- in the office mail. And basically  
10      what we did was we set up a process whereby if I was  
11      not there when they showed up, what to do and how to  
12      go about it.

13          Q       What was that -- well, first of all,  
14      where -- was it your impression that the Comptroller  
15      was not happy with what was going on with respect to  
16      these missing documents? Was that your impression?

17          A       None of us were.

18          Q       Okay. She wasn't happy, you weren't  
19      happy, we've got a deal that's about to close,  
20      you're about to go on this family trip/vacation, and  
21      we don't have these critical documents; right?

22          A       That's correct.

23          Q       Tom Ray is concerned. He's the lawyer.  
24      He's got to make sure this deal gets done. He's  
25      concerned; right?

1           A     Yep. That's right.

2           Q     Your boss is concerned because the --  
3     we've got -- the deal was approved, we've got a  
4     timeline, we've got to get the documents approved by  
5     5:00 on Friday; right?

6           A     This is Wednesday.

7           Q     Right. And this is Wednesday, and you're  
8     going on vacation; right?

9           A     I would be on Thursday, yes.

10          Q     Right. And -- and so everybody on that  
11     call was concerned. That was a five alarm in the  
12     sense that we've got to find these documents and get  
13     it done. Is that fair?

14          A     Yes. And it was a very -- you know, the  
15     process would have been as I -- as I explained to  
16     you before, when the documents arrive, I would look  
17     at them, come -- the -- the attorney, Tom Ray, would  
18     look at them. They would then be taken -- if  
19     everything was in good order, they would be taken to  
20     the City Counselor's office for approval as to form.  
21     But the problem is, there was deficiencies in the  
22     documents.

23          Q     Well, we'll talk about that.

24          A     Okay.

25          Q     But first we've got to find them; right?

1 A Right.

2 Q Right. So we have deficient --

3 A But you have to under --

4 Q Let me finish. We've got deficient  
5 documents working their way through the internal  
6 mail system somewhere that we don't know as of the  
7 time we're talking about where they are. We can  
8 agree with that; right?

9 A Yes, sir.

10 Q All right. And, ultimately, even when  
11 they were discovered and located on the following  
12 day, which was Thursday -- that's right? You were  
13 on vacation, so you -- you don't know when they were  
14 discovered; is that right?

15 A It may say so here.

16 Q Okay. Take a look.

17 MR. BLANKE: Go to page 3 of the document.  
18 Is that it?

19 THE WITNESS: Yeah.

20 MR. BLANKE: At 12:26 -- at 12:50 p.m.?

21 THE WITNESS: Okay. No.

22 MR. BLANKE: No?

23 THE WITNESS: No.

24 A They -- the documents themselves -- I'm  
25 not -- I'm not positive. This -- this report

1 doesn't tell you -- I don't believe that they  
2 arrived on the 26th. Okay? So they -- if they  
3 really were put in the mail on the 25th, to me, I  
4 find it almost incredible -- you could have crawled  
5 them from City Hall to 1520 Market in two days.

6 **Q (By Mr. Norwood) Right. But as of the**  
7 **time you were on the conference call, they had not**  
8 **crawled there yet.**

9 A No.

10 **Q Correct?**

11 A That's right. It was -- the end of the  
12 day on the 26th, they had not yet arrived.

13 **Q All right. So end of the day on the 26th,**  
14 **you're checking out for vacation; right?**

15 A Uh-huh.

16 **Q And we still don't know where the**  
17 **documents are?**

18 A That's -- that's what happened, yes.

19 **Q And when did they finally crawl into your**  
20 **office?**

21 A It appears that they -- that they showed  
22 up on the morning of the 27th.

23 **Q All right. And the reason, if I**  
24 **understand you correctly, that they were to come to**  
25 **you is that you wanted to review them; right?**

1           A       Because had they been brought from the  
2       mayor's office to the comptroller's office, the  
3       deficiencies that I wanted to ensure weren't there,  
4       there were.

5           **Q       Okay. But you never got that opportunity,**  
6       **because you were going on vacation when they landed**  
7       **in your office; correct?**

8           A       Personally, no. But we had other -- other  
9       parties in place, like Tom Ray, to take the document  
10      and make sure that we were okay.

11          **Q       Who determined that once they finally**  
12      **landed on Thursday -- did you fly out Wednesday or**  
13      **Thursday for your vacation?**

14          A       Thursday morning.

15          **Q       Okay. So you were in the air when all of**  
16      **this was transpiring? Let's go to Garavaglia page**  
17      **112, starting at 11:09 a.m. Were you in the air at**  
18      **that time?**

19          A       I was in the car, but nonetheless --

20          **Q       Oh, you drove? Okay. All right. So you**  
21      **were in the car while all of this was transpiring on**  
22      **Thursday, June the 27th, 2019; correct?**

23          A       Yes.

24          **Q       All right.**

25          A       And -- and Tom was -- Tom Ray was trying

1 to quarterback this thing from his office outside of  
2 City Hall.

3 **Q Right. Because you weren't there to**  
4 **quarterback?**

5 A And we were agreed -- that's the agreed  
6 upon method that we spoke to about in the conference  
7 call on the 26th.

8 **Q Because you weren't there to quarterback**  
9 **it; correct?**

10 A You know that.

11 **Q No. I'm -- for the record, I mean, I know**  
12 **it, but let's let the public know it.**

13 A Yes. That's correct.

14 **Q Okay. All right. So do you know when the**  
15 **documents finally landed with the Comptroller's**  
16 **office?**

17 A I can only go by this chronology that --  
18 that is laid out here. It says at 11:20 a.m.

19 **Q All right.**

20 A Okay. Now --

21 **Q Well, let me ask you this: Let's go to**  
22 **the next page, Garavaglia page 113. And this is the**  
23 **part of the chronology that Ms. Chana Morton put**  
24 **together. She says, At 1:25 p.m. when I returned**  
25 **from break, Michele Graham explained that Marsha**



1     **Veal had left some documents with her for the**  
2     **Comptroller's signature.**

3             **Now, this is 1:25 p.m. the day before when**  
4     **things had to be finalized; correct?**

5             A     That's right.

6             Q     All right. And what it says was, But on  
7     **examination of the documents, Michele noticed that**  
8     **several items were missing which were needed prior**  
9     **to the Comptroller signing and executing the**  
10    **documents. Do you see that?**

11            A     That's exactly my point as to why they  
12    weren't to be delivered directly to the  
13    Comptroller's office from the mayor's office.

14            Q     **Because they were not in order?**

15            A     I didn't know that, but I wanted to ensure  
16    that they were in order.

17            Q     **Right. But they were not in order; right?**

18            A     That's correct.

19            Q     All right. And if you had had them  
20    **couriered to you, you would -- may have had an**  
21    **opportunity to review them before you left on**  
22    **vacation; correct?**

23            A     Probably, yeah.

24            Q     **Yeah. Okay. And we could have noticed**  
25    **those deficiencies earlier and tried to cure them**

1     **earlier; correct?**

2           A     Sure, we could have.

3           **Q     And you were responsible for making sure**  
4     **that those documents didn't have those deficiencies;**  
5     **correct?**

6           MR. BLANKE: Are you asking if he was  
7     solely responsible or partially responsible?

8           MR. NORWOOD: No.

9           A     No, I'm --

10          **Q     (By Mr. Norwood) You're responsible --**

11          A     I'm not solely responsible.

12          **Q     I didn't say whether you were solely**  
13     **responsible. Were you responsible --**

14          A     I am responsible for making sure that the  
15     document, after it had been properly vetted through  
16     the normal process, placed before the Comptroller  
17     was accurate, yes.

18          **Q     Okay. That was your responsibility for**  
19     **your boss; correct?**

20          A     Had the process been allowed to happen,  
21     yes.

22          **Q     Right. And that was your responsibility**  
23     **to your boss and she relied upon you to fulfill that**  
24     **responsibility; correct?**

25          A     And it's one that I, in every instance

1     except this one, managed to accomplish.

2           **Q     All right. When did you find out about**  
3     **problems with the documents?**

4           A     When did I find out?

5           **Q     Yeah. In the car while you were on the**  
6     **way or when you arrived?**

7           A     Exactly.

8           **Q     Who -- who told you?**

9           A     I'm not sure. I think I may have gotten a  
10    call from either my person, or it may have been  
11    Michele Graham in 212, but it was just what I was  
12    afraid of, the deficiencies like the mayor's  
13    signature not being notarized, that it hadn't even  
14    gone -- that -- that the mayor had signed it, but it  
15    had not been through the City Counselor's office.  
16    She was -- there was no way she should have signed  
17    that document without it at least being approved as  
18    to form rather than content, but at least approved  
19    as to form by the City Counselor, but she signed it  
20    anyway.

21                    Along that -- what is Roger Denny doing  
22    still bringing signature pages, running around --  
23    he's -- he supplied an incomplete document which the  
24    mayor signed. There was four or five different  
25    deficiencies, which in a normal course of action, we

1 would have put the brakes on at my office  
2 immediately.

3 **Q But you couldn't, because you were gone?**

4 A We couldn't, because it never showed up in  
5 the inter-office mail.

6 **Q Right. And you were gone when it did?**

7 A But --

8 **Q Right?**

9 A But --

10 **Q You agree with that?**

11 A I was gone, but we had made a plan on the  
12 phone the evening of the 26th which was not allowed  
13 to be placed in motion, as I understand it.

14 **Q All right. Well, let me -- let me -- let**  
15 **me just cut to the chase on this one so we can move**  
16 **forward.**

17 On the last page of Garavaglia 113, it  
18 says -- she says, Chana that is -- that's an  
19 asterisk. It says, quote, During this entire  
20 chaotic process on Thursday, July 27th.

21 Do you -- you weren't there, but do you  
22 dispute the fact that it was a chaotic process on  
23 Thursday, July 27th? Do you dispute that?

24 A The chaos was premature and unnecessary.

25 **Q But it was chaos, nonetheless?**

1           A       Because all these other people tried to  
2       run this document and handle the document, and it  
3       was a total unnecessary series of events.

4           Q       **It was chaotic. You agree with that;**  
5       **right?**

6           A       Yes, it was.

7           Q       **All right. She says, Further, I did not**  
8       **receive any verbal or written communication from**  
9       **James Garavaglia or his assistant, Sheila Woods.**  
10           **Do you dispute that?**

11          A       What was she wanting me to communicate  
12       with her about?

13          Q       **I don't know. I mean, apparently the**  
14       **chaotic nature of what was happening, I would**  
15       **imagine.**

16          A       Well, but the chaotic nature of what was  
17       happening was occurring because everybody tried to  
18       do something, and there should have been -- you  
19       know, the control -- somebody should have taken --  
20       Tom Ray had control, and it was taken away from him.  
21       And all of a sudden, from her chronology, people are  
22       running in all crazy directions trying to figure out  
23       what to do and how to get it done. Had they  
24       followed their own internal document signature  
25       process -- nobody did that.

1           Q     All right. But you don't dispute the  
2     fact -- you're saying there was no need, but you  
3     don't dispute her statement that she didn't receive  
4     any verbal communication from either you or your  
5     assistant, Sheila Woods?

6           A     That's true.

7           Q     All right. She goes further and says, I  
8     believe they are ultimately responsible for proper  
9     execution of these types of emergency documents.

10                   Were these emergency documents?

11          A     No. They were documents that had to be --  
12     they weren't -- emergency document means something  
13     else in the City's system.

14          Q     All right. It was an emergency because it  
15     had to be done by Friday, the next day; right?

16          A     That's correct.

17          Q     All right. Instead, many of us had to  
18     stop doing our own work for two days to make sure  
19     that these muni court documents were processed  
20     timely and correctly.

21                   Do you dispute that?

22          A     And totally unnecessarily. If they did  
23     that, it's a totally unnecessary waste of their  
24     time.

25          Q     It would be a waste of their time, but if

1     **they did it, they had to do it to get it done;**  
2     **correct?**

3           A     Well, first of all, that's a gross  
4     exaggeration. I can't imagine that they stopped  
5     their work for two days --

6           Q     **Okay.**

7           A     -- waiting for -- for this document to  
8     come in. No. That --

9           Q     **But you don't know --**

10          A     I don't agree with that statement.

11          Q     **You don't know what happened --**

12          A     Right.

13          Q     **-- because you weren't there on Thursday;**  
14     **right?**

15          A     That's right.

16          Q     **All right. It says further, quote, This**  
17     **type of lack of communication and confusion is**  
18     **unfortunately happening more and more frequently,**  
19     **which is unfortunate, as this process prior to**  
20     **Jim taking over as deputy ran quite smoothly and**  
21     **collaboratively within the department for many**  
22     **years.**

23                   **Now, my question to you --**

24          A     As evidenced -- as evidenced by what?

25          Q     **(By Mr. Norwood) My question to you is:**

1 Do you know whether or not this process ran quite  
2 smoothly and collaboratively within the department  
3 for years --

4 A No.

5 Q -- listen -- let me finish.

6 A No, I'm not aware of that.

7 Q Listen. Let me finish, please. You're  
8 going to get your chance.

9 Do you know whether, prior to you taking  
10 over as deputy, this process ran quite smoothly and  
11 collaboratively within the department for many  
12 years? Do you know, yes or no, if that's the truth?

13 A I do not know that.

14 Q All right. Fair enough.

15 A But I think -- I think that it is a cheap  
16 shot, because what she's saying here is not true.  
17 This is not true.

18 Q Got it.

19 A We -- we did contracts, leases, bond  
20 documents, much more -- much more complex nature and  
21 never had a problem. This went off the rails  
22 because too many people went into panic and were  
23 running around with their heads cut off and didn't  
24 follow their own internal procedure for -- for  
25 getting this thing signed.



1           **Q     And did you --**

2           A     Let me -- let me assure you of one other  
3     thing. Do you see what it says here? By 2:45 on  
4     the 27th, the document was finally signed,  
5     processed, and sent to the register. That's a full  
6     day and two hours before the deadline.

7           **Q     Fair enough. After --**

8           A     Okay.

9           **Q     -- people --**

10          A     All right.

11          **Q     -- had stopped and covered for you while**  
12     **you were on vacation; correct?**

13          A     That's not a fair statement.

14          **Q     Okay. Do you bear any responsibility for**  
15     **this -- what happened here? Do you --**

16                 MR. BLANKE: Why don't you ask him if he  
17     bears all the responsibility.

18          **Q     (By Mr. Norwood) Well, let's start with**  
19     **any. Do you bear any responsibility for what**  
20     **transpired here? Did you make any mistakes here?**

21          A     No.

22          **Q     Okay. None at all?**

23          A     No. Not in my mind, no.

24          **Q     Okay. Not in your mind. And in your**  
25     **view --**

1 A No.

2 Q -- you did everything you were supposed to  
3 do?

4 A I did.

5 Q All right. Fair enough. Let's look at  
6 Garavaglia 114. This is an e-mail, it looks like,  
7 from Tom Ray, Wednesday, June 26, 2019, at 3:28 p.m.  
8 to Chana Morton and your assistant, Ms. Woods, and  
9 you, among others; correct?

10 A Yes.

11 Q And Tom Ray is saying, Chana, this might  
12 be a problem tomorrow.

13 Do you know why he's alerting Chana to the  
14 fact that this could be a problem?

15 A Yeah, because we didn't have them. The  
16 documents --

17 Q All right.

18 A -- had not yet been received.

19 Q All right. And he talked about a default  
20 and the documents having to get to the title  
21 company; correct?

22 A Register's office. And then Roger would  
23 take the documents to the title company so they  
24 didn't get foreclosed on.

25 Q Did you ever consider sort of pushing back

1     **your vacation a day to close this deal out and make**  
2     **sure it got done?**

3           A     No.  At -- at the time, I was locked in.  
4     I was locked in to commitments out of town, and I  
5     believed that -- you know, the whole world isn't  
6     going to collapse if I wasn't there to personally  
7     walk a document, which is normally handled by  
8     administrative staff, through the system.

9           **Q     Okay.**

10          A     And not only that, we had the conversation  
11     and the conference call on the evening of the 28th  
12     to ensure that there was a process that was going to  
13     be in place to make sure that what happened wasn't  
14     going to happen.

15          **Q     Did you provide instructions to anyone**  
16     **from your office to take these documents when they**  
17     **finally showed up and only place them in the hands**  
18     **of the Comptroller?**

19          A     No.

20          **Q     I'm sorry?**

21          A     No, sir, I did not.

22          **Q     You didn't provide that directive?**

23          A     No.  I -- I -- I told a person who you're  
24     speaking about, Marsha Veal, that it was -- that,  
25     you know, that she had oftentimes -- many times with

1 real estate documents, had brought them to the  
2 Comptroller's office to Michele Graham and knew very  
3 well how the process worked and would be able to  
4 ensure that everything was correct and that it would  
5 be placed in order and -- in -- in the proper order  
6 for the -- Michele to look them over. And  
7 there's -- there's spot checks that she would make  
8 and put it in place for the Comptroller to sign.

9 Now, by me -- I told her bring it to the  
10 Comptroller's office for the Comptroller to sign.  
11 Now, if she took some personal license to say Jim  
12 said bring it to the Comptroller and I have to give  
13 it to the Comptroller, that was something that --  
14 that she took license to do. I didn't instruct her  
15 specifically to bring it to and only give it to the  
16 Comptroller as -- as it incorrectly states there.

17 **Q All right. Well, let's see what it**  
18 **incorrectly states. It says around -- I'm on**  
19 **page 112 of Exhibit 6, Garavaglia --**

20 A Okay. We're going backwards, then?

21 **Q We're going backwards.**

22 A All right. I'm with you.

23 **Q It says at around 12:50 p.m., Marsha**  
24 **finally arrived with the muni court documents.**

25 You weren't there, so you don't know if

1     **that's accurate or not; correct?**

2           A     Yes.

3           **Q     She -- and the "she" here is Marsha. Who**  
4     **is Marsha?**

5           A     Marsha is a person that works in the real  
6     estate section of the Comptroller's office at that  
7     time for me.

8           **Q     Did she worked for you; correct?**

9           A     Yes. That's correct.

10          **Q     And according to what Chana wrote, quote,**  
11     **She -- meaning Marsha -- explained to me that she**  
12     **was instructed to, quote, hand deliver, unquote the**  
13     **documents directly to, quote, the Comptroller only,**  
14     **unquote. Do you see that?**

15          A     That's what it says.

16          **Q     All right. And so was Marsha lying to**  
17     **Chana when she told her that you had instructed her**  
18     **to hand deliver the documents directly to the**  
19     **Comptroller only?**

20               MR. BLANKE: Or was Chana lying in this  
21     document?

22          **Q     (By Mr. Norwood) Can you answer my**  
23     **question?**

24          A     I have no idea. All I can tell you is my  
25     instructions to Marsha was to bring it to the

1 Comptroller's office for the Comptroller to sign.

2 Q All right.

3 A What she did from there and what she said,  
4 I don't know.

5 Q And if Marsha said that, she would have  
6 been lying on you; is that correct?

7 A Draw your conclusion. Yeah, I guess so.

8 Q I mean, that -- what's your conclusion?  
9 She said, according to this, if it's accurate --

10 A That she misunder -- that she took some  
11 license and didn't understand what I told her to do,  
12 evidently.

13 Q Okay.

14 MR. BLANKE: Why do you think Chana is  
15 telling the truth?

16 Q (By Mr. Norwood) Okay. Let's go to --  
17 we're going forward again.

18 A What is it? I'm sorry.

19 Q Page Garavaglia 114 --

20 A Okay.

21 Q -- that e-mail from Tom Ray. So Tom is  
22 setting off alarm bells about the fact that we've  
23 got a problem; correct?

24 A Yes. He's saying there might be a  
25 problem.

1 internal mail, so you were delivering the documents  
2 to you. You provided -- you could have told them to  
3 have them couriered; right?

4 A I chose to use the method that was  
5 suggested by the secretary in the mayor's office.  
6 She said, Do you want me to put them in the  
7 inter-office mail, and I said yes.

8 Q Okay. But you could have said, listen,  
9 I'm going on vacation --

10 MR. BLANKE: Objection. This has been  
11 asked and answered twice --

12 MR. NORWOOD: Let -- let -- let me  
13 finish --

14 MR. BLANKE: -- plus -- plus, it's  
15 argumentative as well.

16 MR. NORWOOD: Well, I haven't asked and  
17 answered it yet, so let me ask and answer it --

18 MR. BLANKE: It's the same question.

19 MR. NORWOOD: -- before you object on  
20 asked and answered.

21 Q (By Mr. Norwood) You could have provided  
22 the instructions, knowing you were going on  
23 vacation, to have those couriered to you so that you  
24 can complete your review before you left for  
25 vacation; correct?

1 MR. BLANKE: Objection. Asked and  
2 answered and also argumentative.

3 **Q (By Mr. Norwood) Correct?**

4 MR. BLANKE: Because it could have been  
5 lost by courier just as easily.

6 **Q (By Mr. Norwood) Correct?**

7 MR. NORWOOD: Counselor, I'm going to  
8 object to the speaking objections.

9 MR. BLANKE: You have to speak to make an  
10 objection.

11 MR. NORWOOD: You know that's improper.  
12 Well, when you're suggesting that he talk about  
13 couriers leaving documents, I think we're over  
14 the line. Subject to that --

15 MR. BLANKE: Well, you're over the line by  
16 arguing with him consistently.

17 MR. NORWOOD: You can agree and you can  
18 make your objection and we can take it up with  
19 the Court on the objections, but what we can't  
20 do is to --

21 MR. BLANKE: Argue with each other.

22 MR. NORWOOD: -- signal to the witness  
23 what he should be saying. Right?

24 MR. BLANKE: Well, go ahead.

25 MR. NORWOOD: Okay.



1           A       Can you restate your question?

2           Q       **(By Mr. Norwood) The question, simply,**  
3   **is: You could have avoided some part of this chaos**  
4   **had you said courier those documents to me so I can**  
5   **get them before I go on vacation; correct?**

6                   MR. BLANKE: Objection. Asked and  
7           answered.

8           A       I'm not sure that I could have avoided the  
9   deficiencies because they were there no matter when  
10 I got them.

11          Q       **(By Mr. Norwood) Okay. Fair enough.**

12          A       Deficiencies in the documents existed,  
13 which is what my fear was and why I didn't allow  
14 them to go directly to the Comptroller from the  
15 mayor's office, as claimed in -- in -- you know,  
16 Ms. Morton's e-mail that that's what the normal  
17 process is. That's not the normal process.

18          Q       **Fair enough. Let's go to Garavaglia**  
19 **Exhibit 4. We're going backwards again. And those**  
20 **documents, for the record, are Bates stamped**  
21 **Garavaglia 39 through 104. Are you familiar with**  
22 **those documents?**

23          A       Through 104? Let's see.

24          Q       **Yes. Well, that whole set. That tab.**  
25 **Tab 4, which is --**

1           A       Generally, I have seen these, yes.

2           Q       All right. So let's generally take a look  
3   at them. Let's go to page 42.

4           A       Uh-huh.

5           Q       Do you see that page?

6           A       I am (sic).

7           Q       All right. It's a memo from Judy  
8   Armstrong dated August 26th, 2019 to Comptroller  
9   Darlene Green -- correct --

10          A       It is.

11          Q       -- re: Jim Garavaglia's AT&T and Waste  
12   Management Investigation. Do you see that?

13          A       I do.

14          Q       It says, On January 30, 2019,  
15   Mr. Garavaglia signed a Master Agreement with AT&T.  
16                   Do you see that?

17          A       Yes.

18          Q       Is that accurate? Did you sign a Master  
19   Agreement with AT&T?

20          A       I signed --

21               MR. BLANKE: Let me object -- let me  
22   object in that you're reading it probably  
23   accidentally. It says 2009.

24               MR. NORWOOD: I'm sorry. Let me repeat it  
25   so that the record is clear.

1 Thank you, counsel.

2 Q (By Mr. Norwood) On January 30, 2009,  
3 Mr. Garavaglia signed a Master Agreement with AT&T.

4 Do you see that?

5 A I do.

6 Q And that's true; right? You signed a  
7 Master Agreement with AT&T; right?

8 A I signed a piece of paper with AT&T's name  
9 on it, yes.

10 Q All right. And what is the piece of paper  
11 that you signed with AT&T's name on it?

12 A Well, I received -- well, first of all,  
13 these are only a few of the pages of what made up  
14 this -- see, this -- these are only three -- one,  
15 two, three pages here. The -- the rest of it is  
16 missing, and that is there are a number of two-sided  
17 pieces of paper that was an AT&T listing of all of  
18 the tariffed and non-tariffed, regulated and  
19 non-regulated services and products for both  
20 telecommunications and data that are offered.

21 And what I mean by that is it showed every  
22 circuit, every line, every trunk, every piece of  
23 potential service software, equipment, hardware,  
24 whatever you -- you could think of that you could  
25 buy from AT&T. And next to it was a -- it let us

1 know if it was a tariffed item or not, and then  
2 there was an extension that showed what the price  
3 was. If it was a tariffed item, there was no room  
4 to negotiate except if you bought the product for a  
5 longer -- or service for a longer period of time.  
6 If it was on the non-regulated side, you go through  
7 supply and it was just -- they're offering to  
8 provide whatever the good or service or data product  
9 was.

10 Having received this, our account exec  
11 told us all of our major accounts, in which the City  
12 of St. Louis was one, we're asking and requiring all  
13 of -- all of you to acknowledge receipt and sign  
14 off -- sign this document. And I go, Hmm. I've  
15 never seen anything like it.

16 At this point in time, I was Asset  
17 Manager, not Deputy Comptroller --

18 **Q Right.**

19 A -- and so I brought it to my immediate  
20 supervisor, Ivy Neyland Pinkston, and I said they  
21 want us to sign this and I don't know what it is.  
22 She looked at it. She's a former Bell employee, by  
23 the way. And she looked at it, and she said, I'll  
24 tell you what we need to do, let's -- let's go talk  
25 to the City Counselor's office.

1           So we made the appointment. We went down  
2   there and spoke to -- he's now retired. His name  
3   was Jim Hartung. And we -- we explained to him that  
4   they presented this to us as a major account. They  
5   want us to sign an acknowledgment receipt of this  
6   document, whatever you want to call it. And he said  
7   uh-huh. And he looked at it and he read it and he  
8   said, Okay. He said if -- if you wanted to purchase  
9   anything from Southwestern Bell, you could go on  
10   this list and find it and then you could see what it  
11   was going to cost you, blah, blah, blah? And I  
12   said, Yeah. He said, okay. He said, I don't view  
13   this -- regardless of -- of what -- and he read all  
14   this, and he said, I don't view this the same way  
15   that AT&T does. For our purposes, I view this as a  
16   product catalog or a list of products and services  
17   that AT&T is making available to the City of  
18   St. Louis.

19           **Q     Well -- well, let me stop you there.**  
20   **First of all, we're talking about Garavaglia page**  
21   **44; right?**

22           A     Yes, we are.

23           **Q     And it says at the top Agreement; right?**  
24   **This is an agreement; right?**

25           MR. BLANKE: Let me object. It calls for

1 a legal conclusion on the part of the witness.

2 Q (By Mr. Norwood) Well, it says Agreement.

3 We can agree with that?

4 A The word Agreement is at the top of the  
5 page. That's all I can --

6 Q Well --

7 A That's all I can speak to.

8 Q Well, we can say, too, that the paragraph  
9 starts off by saying, This Agreement between  
10 customer -- who is the customer?

11 A The City.

12 Q All right. And AT&T corporation?

13 A Uh-huh.

14 Q Is effective when signed by both parties  
15 and continues as long as services are provided under  
16 this Agreement.

17 So we see Agreement again; right? You  
18 read this Agreement before you signed it; right?

19 A I did.

20 Q All right. And it says customer. It says  
21 by its authorized representative. Do you see that?

22 A Yes.

23 Q Were you an authorized representative to  
24 sign on behalf of the City at this time?

25 MR. BLANKE: Let me -- let me just make an

1 objection for the record and ask for your  
2 consent that I can make this a continuing  
3 objection for all of the questions that follow  
4 about it this document.

5 MR. NORWOOD: Yes. Absolutely.

6 MR. BLANKE: It's irrelevant, completely  
7 and utterly irrelevant as to what he did as  
8 Assess Manager -- Asset Manager, a totally  
9 different position, would not constitute  
10 grounds to discipline him at all under the  
11 City's policies. So it's irrelevant to these  
12 proceedings.

13 MR. NORWOOD: Subject to that. Thank you,  
14 counsel.

15 **Q (By Mr. Norwood) Were you an authorized**  
16 **representative to sign on behalf of the City when**  
17 **you signed this document?**

18 A Based on the conclusion that the City  
19 Counselor's office determined, that this was not a  
20 contract, it was not an agreement legally binding  
21 for the City to buy, lease, or otherwise procure  
22 anything from AT&T, he said the -- Jim Hartung told  
23 Ivy and myself that it would be okay, go ahead and  
24 sign it. It doesn't bind us to anything.

25 Anything you buy, be on the regulated or

1 on the non-regulated side, would be done on a  
2 separate, individual contract by department with a  
3 separate -- following the procedures to purchase  
4 or -- or lease or procure any of these products  
5 totally separate from this agreement. This is  
6 nothing more than a catalog of products and services  
7 to be provided to the City if you want to buy it  
8 from them. He said it is not -- AT&T may consider  
9 it one thing, but for our purposes, we're not bound  
10 or governed by the rules that AT&T is -- is  
11 attempting to impose. Therefore --

12 **Q All right. All right.**

13 A -- it is not a contract. It is not a  
14 binding anything, other than a catalog.

15 **Q And that's your opinion?**

16 A That's not my opinion. It's the -- it's  
17 what the City Counselor told us when we met with  
18 him.

19 **Q Okay. He said that this wasn't a binding**  
20 **agreement, is what you're testifying to?**

21 A It's not a contract. He said it's a  
22 catalog.

23 **Q Okay.**

24 A And he then instructed us, he said either  
25 one of you can sign it. So we said thank you, we



1 left, we went back to her office, and I said, Well,  
2 want to sign it? And she says, You're the guy  
3 that's over telecommunications. I don't even know  
4 what most of this stuff is --

5 **Q Okay.**

6 A -- which was attached. She said, Go ahead  
7 and sign it.

8 **Q So you just signed it?**

9 A I signed it at the direction of the person  
10 I worked for at the time.

11 **Q And you signed it because, in your view,**  
12 **it wasn't binding, it was just --**

13 A It wasn't my view, it was the view --

14 **Q -- a waste of ink?**

15 A Nope. It was the -- it was the view of  
16 the person who we sought counsel on to determine  
17 what this actually was.

18 **Q So it was sign it just to sign it, but it**  
19 **had no legal significance, is what you understood as**  
20 **the information you got; correct?**

21 MR. BLANKE: Let me object in that it  
22 calls for a legal conclusion as to it didn't  
23 have any legal significance.

24 MR. NORWOOD: Fair enough.

25 **Q (By Mr. Norwood) Now, let's go back to**

1     page 42. It says AT&T -- I'm -- I'm on the second  
2     sentence now on page 42 in the memo from Judy  
3     Armstrong dated August 26, 2019. She says, AT&T is  
4     utilizing this as a contract with the City of  
5     St. Louis; right?

6             A     What?

7             Q     AT&T -- second sentence, first  
8     paragraph -- is utilizing this as a contract with  
9     the City of St. Louis.

10            Do you see that? In the first -- no, I'm  
11     sorry. Not the numbered paragraph, the first  
12     beginning paragraph at the top.

13            A     Uh-huh.

14            Q     Do you see that second sentence?

15            A     Yes.

16            Q     All right. AT&T is utilizing this as a  
17     contract with the City of St. Louis; correct?

18            A     I see the sentence, yes.

19            Q     All right. And do you know if AT&T was  
20     utilizing this as a contract in 2019, August,  
21     against the City?

22            A     I never saw this or referred -- had this  
23     document referred to from 2009 until I saw it as  
24     part of this proceeding. I never saw it or heard of  
25     it again.

1     **this document.**

2           A     The one that I was told was a catalog and  
3     not a contract?

4           Q     **The agreement that you said somebody told**  
5     **you was not an agreement.**

6           A     It's not somebody. It was somebody that  
7     was an attorney --

8           Q     **Right.**

9           A     -- who reviewed it in the City Counselor's  
10    office.

11          Q     **Right. That told you --**

12          A     It wasn't -- it wasn't somebody in my  
13    office. I didn't make it up. It was somebody that  
14    we -- that we sought out in the City Counselor's  
15    office.

16          Q     **All right. Let's talk about paragraph**  
17    **number 5. It says, Waste Management is a vendor**  
18    **selected to remove trash at the Gateway**  
19    **Transportation Center. Their original contract was**  
20    **for July 1, 2015 to July 30, 2017 with the City,**  
21    **having the right to extend for three additional**  
22    **one-year periods, for a maximum of five years.**  
23    **James Garavaglia signed an extended agreement for**  
24    **36 months on May 22nd, 2017.**

25                   Do you see that?

1           A     I'm reading it with you.

2           Q     Do you see that?

3           A     I do.

4           Q     And did you sign an extended agreement for  
5     an additional 36 months on May 22nd, 2017?

6           A     I don't have any idea what this is.

7           Q     All right. Well, let's see if we can find  
8     it in our stack of stuff. Let's turn to Garavaglia  
9     89. Yeah. 89. Are you familiar with that  
10    document?

11          A     No, sir.

12                COURT REPORTER: Did you say yes, sir or  
13     no, sir?

14                THE WITNESS: I said no, sir.

15                COURT REPORTER: Thank you.

16          Q     (By Mr. Norwood) Did you sign this  
17    document?

18          A     No, sir. Not that I recall at all, no.

19          Q     Is that your signature?

20          A     I can't say that it is.

21          Q     Okay. Do you know who would have signed  
22    your signature on this document?

23          A     No, I -- I -- I'm not sure who was the  
24    actual manager of the Gateway Center at that point  
25    in time. I'm not -- I'm not remembering the dates

1 and the -- when -- when Ms. Jones left and Ms. Day  
2 actually came in. I'm -- I'm not sure what the  
3 dates were, but there was a -- there was an interim  
4 on-site manager and still is at the Gateway Center.  
5 This was not an operation that I was directly  
6 responsible for. There was a supervisor that had  
7 day-to-day operational responsibility there.

8 **Q Okay. Let's just -- for the record let's**  
9 **set the lay of the land here.**

10 **This says Service Agreement, Non-Hazardous**  
11 **Waste Service Summary for Waste Management; correct?**

12 **A** It does.

13 **Q And it has some terms with a base rate;**  
14 **correct?**

15 **A** I see that.

16 **Q And it has a signature that says James M.**  
17 **Garavaglia; correct?**

18 **A** Yes, it does.

19 **Q And it has written James M. Garavaglia.**  
20 **Did you write that? Is that your writing?**

21 **A** No.

22 **Q That's not your --**

23 **A** Not that -- not that I'm aware of, no.

24 **Q It could be your writing, you're just**  
25 **saying you don't know as you sit here today?**

1           A       I'm saying I don't recall anything about  
2 this document or having signed it.

3           Q       Okay. And I guess my question to you:  
4 You -- you write your signature quite often, don't  
5 you?

6           A       I did, yeah.

7           Q       All right. And I'm just trying to get  
8 from you, since you're an expert on your own  
9 signature -- first of all, is that your handwriting?

10          A       I don't know that it is.

11          Q       Do you know that it's not? Can you  
12 testify under oath that that's not your handwriting?

13          A       I'm not saying that -- that -- I'm not --  
14 I don't know what that is. It could be -- it could  
15 be that it's traced. It could be that somehow or  
16 other it's been transferred on it. I don't -- I  
17 don't know. I do not have any recollection of this  
18 particular document.

19          Q       So you're suggesting that somebody forged  
20 your signature at the City?

21          A       No. What I'm suggesting is, is I don't  
22 know this document. I'm not familiar with it, nor  
23 am I familiar with my name being on it.

24          Q       All right. So in any event, it's dated  
25 5/22/17; correct?

1 central office on Chestnut Street. The trunk line  
2 component for the City went out of contract, which  
3 means, again, as part of the custom tariff, that  
4 went from a lower price -- because we had the  
5 five-year agreement in place -- to a much higher  
6 price because we weren't under contract anymore.

7 **Q Well, let me ask you, how did it go out of**  
8 **contract? Weren't you responsible for making sure**  
9 **that there was continuity between those contracts?**

10 A No. The Southwestern Bell representative  
11 who is in charge of our account was responsible  
12 for -- for bringing it to our attention and for  
13 bringing us our opportunity to renew the contract  
14 with various options.

15 **Q And did that happen?**

16 A No. We -- we didn't have a -- a person in  
17 place. And so when the price -- when the price of  
18 the trunks went up, I called and said, Hey, our bill  
19 is out of whack. And they said, Okay. And we -- we  
20 discovered jointly that it was -- what caused it was  
21 this problem with -- with the trunks being out --  
22 out of contract.

23 And so someone came down and we decided  
24 that we needed to re-up for the longest period of  
25 time. And at that point in time we also did

1 something that we normally do when the contracts  
2 come up, and that is we did a busy study. And the  
3 busy study takes those trunk lines and there's a --  
4 a guide that AT&T gives us by which we can determine  
5 what is an acceptable busy.

6 In other words, when you call and you get  
7 an all circuits busy sometimes, that's because  
8 everyone is on the phone and you can't get a trunk  
9 to make the call to the central office and for your  
10 call to go out.

11 So we did a trunk study. We took out some  
12 trunks. We saved some money, and we put the new  
13 agreement in place. Now, when we put the new  
14 agreement in place, for some reason they couldn't  
15 get the numbers to work, and so we were generating  
16 bills that were incorrect, meaning the amount billed  
17 was not reflective of the amount owed.

18 And so they asked us to -- they gave us  
19 the number and they said start deducting this amount  
20 every month off your bill. And after a couple of  
21 months, I said, no, that's not the way to do things,  
22 because it's probably -- it's just not -- not the  
23 way we want to do it. There -- there's no --  
24 there's no backup to explain why we just deducted so  
25 much money off of our bill.



1           And so they said, Okay. We'll get this in  
2     place. We'll get it fixed. Well, by this time,  
3     between the amount that was deducted and the amount  
4     billed being incorrect, we had run up something  
5     around 200,000-or-so dollars of past due that was  
6     inappropriately billed because we were out of  
7     contract versus at the contract price.

8           **Q     Okay.**

9           A     So they submitted a proposal to us and  
10    said, Here, we're going to credit you \$200,000.  
11    Well, the past due exceeded 200,000. By how much, I  
12    don't remember. But it exceeded 200,000. And so I  
13    met with the Comptroller and we -- and I explained  
14    to her what happened. I said, They want to give us  
15    a credit for 200,000. I said, What do you think?

16               And we looked at each other and we both  
17    came to the same conclusion. The credit showed no  
18    backup. There was no detail. There was no, I  
19    guess, reconciliation from our bill to what was  
20    shown in the -- in the past due. And so we only had  
21    a certain degree of confidence that that was the  
22    right number, and so we rejected at that time the  
23    \$200,000 credit that they offered.

24           **Q     And what about the amount that was owed?**

25           **There was some money owed; right?**

1           A     Well, it's to be determined, because we  
2     never did a detailed reconciliation of what was past  
3     due. Now, I want to make a point.

4           **Q     Why was there never a detailed**  
5     **reconciliation?**

6           A     Because AT&T did not have someone  
7     available to provide us with that at that point in  
8     time. Now --

9           **Q     So it was AT&T who was -- fault that this**  
10    **thing was --**

11          A     AT&T's --

12          **Q     -- hanging around?**

13          A     AT&T's -- it wasn't so much a fault as it  
14    was AT&T did not have someone available to let us  
15    have on an extended period of time -- meaning a  
16    couple of days -- to work through and do the  
17    reconciliation necessary to come up with an accurate  
18    number for everybody's purpose.

19          **Q     But this went back for some years. Do you**  
20    **agree with that?**

21          A     That -- that was in nineteen -- or  
22    twenty -- 2015, I'm thinking.

23          **Q     All right. All the way back to 2015 when**  
24    **you were as Asset Manager?**

25          A     Yes.

1 we talked about the \$200,000 a few -- a few minutes  
2 ago. When the 200,000 lacked the detail, you know,  
3 I went back to her and I said, Let's go back and  
4 we're going to do a detailed reconciliation, month  
5 by month, year by year.

6 And, remember, the City of St. Louis paid  
7 a bill every month. We never missed a month of  
8 vouchering a bill. The difference was they were  
9 generating manual invoices for us which did not  
10 affect the billing system which was generating a  
11 bill that was \$30,000 a month higher than what it  
12 should have been. That bill did not -- the manual  
13 bill did not reconcile with the billing system, and  
14 so the billing system kept saying, well, you paid  
15 seventy, we billed you a hundred. That 30,000 went  
16 to past due, so --

17 Q All right. Let me -- let me say this,  
18 because we're short on time.

19 So you worked on this with Mary Harp, and  
20 if we talk to Mary Harp, she will --

21 A Absolutely.

22 Q -- vouch that? Okay. Let's go to  
23 Garavaglia 57, which is part of Exhibit 4.

24 A 57?

25 Q Garavaglia 57 -- page 57. Do you see that

1     **page?**

2           A     Yes. I'm looking at it.

3           **Q     All right. At the top it has AT&T**  
4     **letterhead and it has Addendum to Comprehensive**  
5     **Service Order Attachment. Do you see that?**

6           A     I do.

7           **Q     All right. And did you sign this**  
8     **particular document?**

9           A     I believe I did.

10          **Q     All right. And did you have authority to**  
11     **sign this particular document?**

12          A     Yes.

13          **Q     Who -- who told you you had authority to**  
14     **sign this particular document?**

15          A     This particular document is an attachment.  
16     You say an addendum. That's the same word as an  
17     attachment as to a contract that was put through  
18     AT&T through the normal contract process. What this  
19     is is a scope of work.

20          **Q     Right.**

21          A     This is a scope of work which details that  
22     if you're going to spend \$50,000 -- and that's what  
23     the contract says -- this comes back and gives you  
24     the detail of that work.

25          **Q     Right. And my question to you, because it**

1     **says Agreed: City of St. Louis on the document;**  
2     **right?**

3           A     Okay. That's what it says.

4           Q     **All right. And it says by James M.**  
5     **Garavaglia; correct?**

6           A     It does.

7           Q     **Authorized agent or representative;**  
8     **correct?**

9           A     Okay. And that doesn't mean --

10          Q     **That's what it says.**

11          A     That doesn't mean anything more than I was  
12     the head of the telecommunications section for the  
13     City.

14          Q     **Does that mean you were authorized to sign**  
15     **on behalf of the City?**

16          A     I was authorized to sign this type of a --  
17     of a document, yes.

18          Q     **What --**

19          A     This is not a contract. Well, I don't  
20     know. I -- I ran this by, again, somebody. I'm not  
21     sure if it was Garvin or who it was in the City  
22     Counselor's office. I said, Look, there is an  
23     existing contract which is the over -- overview  
24     umbrella document that will be in place by which  
25     AT&T gets paid.

1           Now, when it comes down to actually doing  
2   the work, they are going to give us a detailed scope  
3   of work. And you understand what a scope of work  
4   is. That's what this is. And, therefore, I was  
5   told that it's not a contract. You can sign it.

6           **Q     Did you -- this was at a time when you**  
7   **were Deputy Comptroller; correct?**

8           A     That's what it says, yes.

9           **Q     Did you discuss this particular document**  
10   **with the Comptroller Green?**

11          A     Not that I recall.

12          **Q     All right. So if there was a question**  
13   **about whether or not you could or could not sign**  
14   **contracts --**

15          A     This isn't a contract.

16          **Q     Well, document. It's a document; right?**

17          A     It's a scope of work.

18          **Q     And it has legal obligations; correct?**

19          A     Well, I don't know. I'm not a lawyer.

20          **Q     Okay. So -- but you never asked the**  
21   **Comptroller if you were authorized to sign this**  
22   **contract as an authorized representative of the City**  
23   **of St. Louis; correct?**

24               MR. BLANKE: Objection with the use of the  
25   word contract, when he keeps telling you that

1 MR. BLANKE: But things are not as --  
2 what's the word?

3 MR. NORWOOD: Okay.

4 MR. BLANKE: What's the word?

5 MR. NORWOOD: I'm just going to have to --

6 MR. BLANKE: Absolute as you make them.

7 MR. NORWOOD: -- terminate the deposition  
8 if we cannot agree that you're going to make  
9 legal objections and I will to continue to ask  
10 my questions. Can we agree to that, counselor?

11 MR. BLANKE: Yeah. We can agree to that,  
12 yes.

13 MR. NORWOOD: Okay. Thank you, counselor.

14 MR. BLANKE: Let's make that reciprocal,  
15 also.

16 **Q (By Mr. Norwood) All right. So in your**  
17 **view --**

18 A No, it's not my -- that's not my view.

19 **Q Well, let me say this: Is this document**  
20 **you signed binding on the City, in your view?**

21 A I can only tell you what I was told by the  
22 City Counselor's office that this is not a contract  
23 that I was okay to sign.

24 **Q And who told you that?**

25 A I'm thinking it was Garvin. I don't know

1     that.  I don't remember exactly.

2           **Q     Why are you thinking it was Garvin?**

3           A     Because he's the attorney that we dealt  
4     most often with on a number of matters across the  
5     board.

6           **Q     And did you talk about -- you didn't talk**  
7     **about this with your boss?**

8           A     I talked with an attorney.

9           **Q     But your -- Garvin is not your boss;**  
10    **right?**

11          A     But Garvin is explaining to me if I have  
12    the authority to sign it or not.

13          **Q     Is Garvin your boss?**

14          A     No.

15          **Q     Do you report to Garvin?**

16          A     No, I do not.

17          **Q     Did Garvin hire you?**

18          A     No.

19          **Q     Did Garvin promote you?**

20          A     No.

21          **Q     Did Garvin approve your salary increases?**

22          A     No.

23          **Q     You reported to Comptroller Darlene Green;**  
24    **correct?**

25          A     Yes.



1           Q     And as we had discussed earlier, you had  
2     an obligation to keep her informed about what was  
3     happening; correct?

4           A     Yes. But then again, I also in this job  
5     have discretion to decide what to bring to her and  
6     what not to.

7           Q     Oh, okay. Tell us about that. Where is  
8     that in the policy manual? I -- I missed that. Is  
9     there anything in the Code of Conduct that says you  
10    have discretion to not inform your boss about what's  
11    going on?

12          A     I didn't say that. I said that as a  
13    senior manager, I'm in that job because I am  
14    making -- I -- I'm entrusted with making decisions  
15    and have some discretion about what to bring to my  
16    boss. I can't bring her everything that's happening  
17    every day. I'd do nothing but sit there on the  
18    phone with her and say, well, what do you think  
19    about this, can I do this, can I do that. That's  
20    not what the job is about.

21                She wouldn't need me there, which  
22    obviously she decided she didn't -- she wouldn't  
23    have needed me there had I had to go to her with  
24    everything. There is a certain amount of discretion  
25    that a senior manager has in the job that I have.

1           **Q     And part of that discretion includes not**  
2   **informing your boss?**

3           A     Part of that discretion is finding out  
4   from the best means possible what you can do and  
5   what you can't do.

6           **Q     And -- and you believe that you could sign**  
7   **this contract because -- or this document because it**  
8   **wasn't a contract; right?**

9           A     No. I believed that I was told that I  
10   could sign this document.

11          **Q     If the Court determines that it was a**  
12   **contract, a binding, legal obligation, that would**  
13   **mean that you signed that binding, legal obligation**  
14   **without authority to do so; correct?**

15               MR. BLANKE: Objection. It calls for  
16   speculation and calls for a legal conclusion.

17          **Q     (By Mr. Norwood) Correct?**

18          A     No. It means that I signed something, and  
19   the direction I was given by the City Counselor's  
20   office was incorrect, is what it means.

21          **Q     Meaning you signed a document that**  
22   **purported to bind the City, but it didn't because**  
23   **you didn't have authority to bind the City; correct?**

24          A     No. It meant that I signed something at  
25   the direction of the City Counselor's office, and if

1 the City Counselor made a mistake, then it was their  
2 mistake and not mine.

3 Q And therefore because it's not an  
4 enforceable contract, so be it; is that right?

5 A If it's not a contract, then I was  
6 authorized to sign it per the City Counselor.

7 Q And if it is a contract and you did sign  
8 it, it's not worth the paper it's written on because  
9 you weren't authorized to sign it; correct?

10 A That would be correct.

11 Q All right.

12 MR. BLANKE: Calls for speculation and is  
13 a legal conclusion. Objection.

14 MR. NORWOOD: It's already been answered.

15 Q (By Mr. Norwood) Let's pivot to --  
16 quickly to tab number 7. And it starts -- this is  
17 Garavaglia Deposition Exhibit 7, page 352. This is  
18 the letter dated July 2nd, 2019 that was sent to you  
19 by Comptroller Darlene Green, a copy to Mr. Richard  
20 Frank.

21 A 3 -- 353? Yes, sir?

22 Q Yes. It's the -- tab 7.

23 A Okay. Yeah, I've got it.

24 Q The first page of tab 7.

25 A I got it. I got it.

1 Q And you've signed this document; correct?

2 A Yes.

3 Q And in paragraph 7, you say after the  
4 forced leave -- well, let me go back.

5 You say after the forced leave was  
6 rescinded, my vacation time that I had used from  
7 July 2nd to July 22nd was restored; correct?

8 A Yes.

9 Q And that's accurate; correct?

10 A Yes.

11 Q And then paragraph 10, you say, After the  
12 forced leave was rescinded, my vacation time that I  
13 had used from July 23rd, 2019 to August 29, 2019 was  
14 again restored on September 20, 2019; correct?

15 A Yes.

16 Q And that was true; right?

17 A It was, yes.

18 Q All right. Let's go to tab 11. Have you  
19 seen that document before?

20 A I'm having trouble reading what it says,  
21 but I -- I don't know that I recall having seen it  
22 before.

23 Q Okay. Well, let me read it for the  
24 record. It's Re: -- well, at the top it says Deeds  
25 of Trust; correct?

1           A     Okay.

2           Q     And it's an e-mail dated Thursday,  
3     August 11, 2016, 10 -- 10:18 a.m., to Comptroller  
4     Green, cc you. And Mr. Ray says, quote, Darlene,  
5     Jim called yesterday and inquired about his  
6     executing certain Deeds of Trust processed by  
7     Marsha -- Marsha Veal. As I recall, these are loans  
8     of CDA money to homeowners. As you know, the  
9     Charter, Article XV, Section 3, authorizes a  
10    designation of a subordinate to affix the  
11    Comptroller's signature on warrants. In order to do  
12    so, the designation must be in writing, in  
13    duplicate, filed with the mayor and treasury  
14    division.

15                    You were aware of that in August of  
16    2016 -- correct --

17           A     Yes. That's what it says.

18           Q     -- when you were Asset Manager; correct?

19           A     That's what it says, yes.

20           Q     And you had went to Mr. Ray to try to find  
21    out if you could sign off on these documents;  
22    correct?

23           A     Just to get some clarity, it looks like I  
24    did, yes.

25           Q     And he told you that in order to do

1     that -- or told you and the Comptroller that it  
2     would have to be in accordance with a written  
3     authorization; correct?

4           A     Yes. That's what it looks like.

5           Q     It says, If you authorize Jim to sign  
6     these deeds, I would follow your normal procedure of  
7     designating him as such; right? Do you see that?

8           A     I do.

9           Q     And that was the normal procedure. To be  
10    authorized to sign contracts on behalf of the City,  
11    there needed to be written authorization; correct?

12          A     Uh-huh. Yes.

13          Q     You knew that; right?

14          A     It says I did, yes.

15          Q     You knew that in 2016. You knew that  
16    before 2016, didn't you, Mr. Garavaglia?

17          A     Let's put it this way: I knew it at least  
18    by then. Let's -- let's say that.

19          Q     Okay. Well, let's say -- did you know it  
20    before 2016?

21          A     Probably.

22          Q     Okay. And let's go to the next page.  
23    It's Green 0 -- or GRN000461, and it's a document  
24    that says Report of Delegation of Authority.

25                   Do you see that?

1           A       Yes.

2           Q       All right. Because it says Lease  
3 Agreement; right? I think that means a contract;  
4 right?

5           A       Yes.

6           Q       All right. And so you knew in September  
7 '14 that as it relates to St. Louis Composting, that  
8 that contract had to be executed by the Comptroller  
9 and signed as to form by the City Counselor;  
10 correct?

11          A       Yes.

12          Q       All right. Now, let's go to -- let's go  
13 to tab 14. Because I believe earlier in your  
14 testimony you indicated you were admonished by the  
15 Comptroller because you signed a lease contract that  
16 you said wasn't a contract; correct?

17          A       Yes.

18          Q       And is this the lease contract that we  
19 were talking about that was not a lease contract?

20          A       This is the request for the option that I  
21 inquired about through the City Counselor's office  
22 and was told that I could in fact sign the request  
23 for -- for -- this -- this option, as opposed to  
24 having it go through E&A again and be a second  
25 contract. That's correct.

1 to exercise the option.

2 Q That's right. He's notifying --

3 A Spelled out in the lease.

4 Q -- the Comptroller; correct?

5 A Well, that's what it says to do in the  
6 lease.

7 Q Right. And that's what he did; right?

8 And that was on June 2nd, 2017; correct?

9 A Yes.

10 Q All right. And then if we go to tab 14,  
11 GRN00464, there was an Extension of Lease Agreement  
12 prepared with a signature for Darlene Green,  
13 Comptroller; correct?

14 A Right.

15 Q And you scratched that out and hand wrote  
16 James M. Garavaglia, Deputy, under where her  
17 signature -- or her name was; correct?

18 A Yes.

19 Q And you signed James M. Garavaglia;  
20 correct?

21 A I did.

22 Q Was this a contract, in your view?

23 A Again, I only did this with advice of  
24 counsel. And I was told, based upon the initial  
25 lease, exercising the option under the term and



1 guidelines of the initial lease did not constitute a  
2 new contract.

3 Q All right. Let's look at the first page  
4 of Depo Exhibit 4 (sic), GRN000462. And that's a  
5 memo to you, James Garavaglia, Deputy Comptroller,  
6 Finance and Development; correct?

7 A Yes.

8 Q From Comptroller Darlene Green; correct?

9 A Yes.

10 Q Date, July 21, 2017; correct?

11 A Yes.

12 Q Re: Unauthorized signature; correct?

13 A Yes.

14 Q And it says, quote, It has come to my  
15 attention that you, as Deputy Comptroller of Finance  
16 and Development, erroneously attempted to execute a  
17 lease agreement extension between the City of  
18 St. Louis and St. Louis Composting. See attached.

19 Did I read that accurately?

20 A You did.

21 Q It goes further and says, As you know --  
22 and you did know, right -- currently, there are only  
23 two authorized signatures for contracts and their  
24 extensions. You knew that; correct?

25 A Absolutely.

1           Q     All right. As Comptroller, I am  
2     authorized and I have authorized Deputy Comptroller  
3     Beverly Fitzsimmons.

4                     Do you see that?

5           A     Yes.

6           Q     She says, I am puzzled as to how this  
7     could have happened. This is an improper procedure.  
8     Please work with Beverly Fitzsimmons so that Michele  
9     Graham, Contract Compliance Officer, can process and  
10    provide a properly executed extension to the  
11    contract. She cc'd Beverly Fitzsimmons, she cc'd  
12    Alan Jankowski.

13                    Who is Alan Jankowski?

14          A     He works in Forestry.

15          Q     All right. Michele Graham. She is --  
16    what was she, contract supervisor?

17          A     Yes.

18          Q     All right. Brad Hayes, he was in charge  
19    of Parks and Recreation; correct?

20          A     That's correct.

21          Q     He's a white male?

22          A     Yep.

23          Q     Okay. Vanessa Carter. Who was that?

24          A     She was an accountant that the worked at  
25    the Parks Department.

1           **Q     All right. Kathy Sullivan, who is she?**

2           A     She's a part-time administrative person  
3 also working at the Parks Department.

4           **Q     All right. So she said you signed the**  
5 **contract without authority; right?**

6           A     Based on what someone who is not an  
7 attorney told her.

8           **Q     I'm sorry? Who was -- who told her --**  
9 **well, you just acknowledged that if it was a lease**  
10 **contract, you weren't authorized to sign it;**  
11 **correct?**

12          A     And I also testified that I had talked to  
13 the City Counselor's office and they -- they  
14 determined that after reviewing the contract, that  
15 this was the exercising of an option that was part  
16 of the initial contract.

17          **Q     Okay. When you got this memo, did you**  
18 **write back -- this is when you were Deputy**  
19 **Comptroller. Did you write back to Comptroller**  
20 **Green and say, Listen, I talked to the City**  
21 **Counselor and they told me it was okay? Did you**  
22 **communicate --**

23          A     There was a verbal discussion this --  
24 regarding this.

25          **Q     What did you -- what was the verbal**

1     **discussion?**

2           A     I explained that I had -- what I had just  
3     told you that I had done.

4           **Q     You explained that to who?**

5           A     To the Comptroller and to Bev.

6           **Q     Prior to this time, had you and the**  
7     **Comptroller had any other discussions about**  
8     **unauthorized signature?**

9           A     Not that I'm aware of. Not that I can  
10    recall, anyway. But if you -- if you look at --  
11    under tab 13 and you go to GRN000476, the letter  
12    that I received was actually generated based on this  
13    e-mail saying after speaking to Beverly Fitzsimmons,  
14    it is my understanding that this extension will need  
15    to be done as an amendment to the original contract.

16          **Q     Right.**

17          A     Well, Beverly Fitzsimmons is not an  
18    attorney. And when I spoke to the -- an attorney, I  
19    was told something totally contrary to this.

20          **Q     But does this say anything about you being**  
21    **authorized to sign that contract?**

22          A     I didn't sign a contract.

23          **Q     Or sign that document?**

24          A     I signed -- I signed an option, which I  
25    was told I was allowed to do under the terms of the

1 original lease contract.

2 Q Right. But my point is, this doesn't say  
3 you are authorized to do it; right?

4 A No. That -- that communication was verbal  
5 via telephone.

6 Q When you talked to the Comptroller about  
7 this before -- was it before or after you got the  
8 memo?

9 A After.

10 Q All right. And was that a phone call?  
11 Was it in person?

12 A I believe it was in person.

13 Q All right. Was anybody else present?

14 A I believe Bev was there.

15 Q All right. So Bev would have been present  
16 when she was talking to you about the memo and the  
17 unauthorized contract. What happened -- what was  
18 said during that discussion?

19 A Basically just reiterating what was in the  
20 letter. And I explained what I had done and it --  
21 what it came back to is Bev said, Oh. She said,  
22 Well, I'm just trying to make sure that I've got all  
23 my bases covered.

24 Q Who said that?

25 A Bev.

1 needs to be addressed, that's correct.

2 Q Okay. All right. So let's go back to  
3 Exhibit 14, page 463, which is the second page  
4 behind the memo that the Comptroller provided to  
5 you. And this appears to be a letter from Kathy  
6 Sullivan, executive assistant for Mr. Greg Hayes; is  
7 that correct? Kathy Sullivan?

8 A Yeah, she works for Greg.

9 Q All right. And it says to -- well, it  
10 looks like it was cc'd to Janis Garavaglia. Who is  
11 that?

12 A No relation. She married someone with my  
13 same last name, but we're not related.

14 Q Okay. Had you seen a copy of this letter  
15 before?

16 A I don't think I have.

17 Q All right. It's dated July 10, 2017  
18 addressed to Mr. Patrick Geraty, President,  
19 St. Louis Composting. It says, Dear Mr. Geraty --  
20 G-E-R-A-T-Y -- enclosed please find the  
21 fully-executed Extension of Lease Agreement between  
22 the City of St. Louis and St. Louis Composting for  
23 an additional one year, expiring August 31, 2018.

24 We were advised by Mr. James Garavaglia,  
25 Deputy Comptroller, that it was not necessary that

1 the City Counselor approve the extension, nor did it  
2 require City -- the signature of the registrar.

3 Do you see that?

4 A Yep.

5 Q Did you tell that to Ms. Sullivan?

6 A If she says I did, I probably did.

7 Q Okay.

8 A Again, based on information I received  
9 from the City Counselor's office at the time.

10 Q Got it. Let's go to -- so you talked a  
11 number of times about advice from the City  
12 Counselor. You mentioned a couple names. You  
13 mentioned Mr. Garvin. You mentioned some others.

14 Who were these City Counselors you're  
15 talking to? We just want to make sure we get that  
16 on the record.

17 A It depends on which instance you're  
18 talking about.

19 Q All right. Let's go with the instance as  
20 it relates to the -- well, let's go to the instance  
21 where it relates to the -- well, you didn't sign the  
22 Waste Management contract, so let's not talk about  
23 that one. Let's talk about -- well, this one. This  
24 is the one I think you identified that you went to  
25 someone in the City Counselor's office --

1     **2015?**

2           A     You're asking me if I know if there was  
3     one?

4           Q     If you know as you sit here right now if  
5     there was a follow-up.

6           A     I don't -- I do not.

7           Q     All right. Let's go to tab 18.

8           A     Okay.

9           Q     Let's look at the first page which is  
10    denominated as GRN000477. Do you see that document?

11          A     Yes.

12          Q     And this is an e-mail from Dr. Ikpeama,  
13    Tuesday, February 20, 2018 at 3:10 p.m.; correct?

14          A     Okay. Yeah.

15          Q     Is that right?

16          A     Yep.

17          Q     And that's an e-mail to you; is that  
18    right?

19          A     Okay. Yes.

20          Q     And did you respond to this e-mail sent by  
21    Dr. Ikpeama?

22          A     I don't recall. I'm sure that eventually  
23    we did. I don't recall that I did the -- that day  
24    or the day after. Do you have that answer?

25          Q     Well, do you recall responding -- you,



1     **meaning Jim, did you respond to Dr. Ikpeama?**

2           A     I'm not sure that I did -- that I -- that  
3     I do recall. But I can tell you this, the Gateway  
4     Transportation Center has a manager in place that  
5     would have been dealing with this one on one  
6     directly with Dr. Ikpeama. Now, why he's sending  
7     this to me and bypassing the supervisor, I don't  
8     know.

9           Q     **All right. Well, you were the supervisor**  
10    **of the supervisor; correct?**

11          A     That's true.

12          Q     **All right. And you had the ultimate**  
13    **responsibility to make sure that your subordinates**  
14    **took care of issues associated with internal audit**  
15    **findings; correct?**

16          A     I was her supervisor, yes.

17          Q     **And you were responsible for make**  
18    **suring -- making sure that any audit findings that**  
19    **reflective negatively on the processes of the City**  
20    **should be remedied? That was your responsibility;**  
21    **correct?**

22          A     It's my secondary responsibility. The  
23    primary responsibility for correcting audit  
24    exceptions lies with the supervisor on-site.

25          Q     **And you had responsibility of some nature,**

1     **you described it as secondary; right?**

2           A     That's right. It's immediately her  
3     responsibility to remedy and to respond to the audit  
4     exceptions.

5           Q     **Who was the supervisor that you're**  
6     **referring to?**

7           A     At this point in time, I believe it was  
8     Sonia Day.

9           Q     **All right. And she reported to you;**  
10    **correct?**

11          A     Yes. Yes.

12          Q     **He says -- and it's directed to you.**  
13    **Dr. Ikpeama, he says, Dear Mr. Garavaglia, I sent to**  
14    **you a follow-up letter dated -- originally it said**  
15    **January 1, 2018. Somebody scratched it out and**  
16    **wrote February. Was that you who scratched it out?**

17          A     That's not my writing, no, sir.

18          Q     **All right. Either January or**  
19    **February 2018 requesting your response on the**  
20    **Gateway Transportation revenue review report**  
21    **findings and recommendations, Project Number 25-RR08**  
22    **(sic). The due date was February 9, 2018. As of**  
23    **today, February 20, 2018, we have not received your**  
24    **response.**

25                    Do you see that?

1           A     It was not my response. It's the response  
2 of the Gateway Transportation Center and the direct  
3 supervisor's responsibility, yes.

4           Q     Well, he sent something to you and he's  
5 saying we haven't received your response. He's  
6 talking to you; right?

7           A     Again, the response should come from the  
8 immediate supervisor of that area.

9           Q     Well, did you tell Dr. Ikpeama that?

10          A     I'm not sure.

11          Q     Did you talk to Dr. Ikpeama at all?

12          A     I'm sure I did, since he was right down  
13 the hall, but I can't say that I can specifically  
14 remember a conversation.

15          Q     All right. He says, If we do not receive  
16 your response by February 26, 2018, we will re-issue  
17 the report as repeat findings. Do you see that?

18          A     I do.

19          Q     Then he says, Thanks for your cooperation;  
20 right?

21          A     Okay.

22          Q     Right?

23          A     Yeah.

24          Q     All right. And is that a good thing for  
25 him to have repeat findings two years later?

1           Q     -- he's right down the -- hold on. He's  
2     right down the hall. You haven't said a word to  
3     him. You haven't responded to him via e-mail. You  
4     had a relationship with him. You're fellow  
5     accountants.

6           A     Uh-huh.

7           Q     Did you tell him that, hey, this is not  
8     me, this is Sandra -- Sonia Day, she's going to  
9     handle it, or did you communicate any of that to  
10    him?

11          A     I believe we did, but yet for some reason  
12    he didn't go to Sonia for the information. But what  
13    I'm -- what I'm looking for is my reconciliation  
14    report that basically tells the story that internal  
15    audit's basic premise for their -- for their revenue  
16    review and their contention that there is money to  
17    be collected is incorrect. My -- I -- I have a  
18    response out there that is not part of this.

19          Q     Okay. Fair enough. Let's go to the next  
20    page. February 28, 2018, 10:51 a.m. Sonia Day to  
21    Dr. Ikpeama, Ms. Day, thanks for your response. It  
22    is very helpful to me. I can issue the report and  
23    just indicate that Gateway Transportation is working  
24    to resolve the findings.

25                   So he's trying to work with Ms. Day to get

1     Green 485, e-mail from Sonia Day dated March --  
2     e-mail from Sonia Day to Dr. Ikpeama -- and you're a  
3     cc -- it says Monday, March 26, 2018, 7:26 a.m.,  
4     Good morning. She says, I am -- I am unable to  
5     meet; however, I will forward the information that I  
6     am requesting and its supporting documentation to  
7     the findings that you originally sent to  
8     Mr. Garavaglia as soon as it is available.

9             That's what she's communicating; correct?

10            A     Okay.

11            Q     Is that right?

12            A     Yeah.

13            Q     Did you ever get involved in communicating  
14     with Dr. Ikpeama to figure out what was taking so  
15     long to get this issue squared away?

16            A     Yeah, I don't know. We -- our lessee, I  
17     guess, was less than forthcoming with the  
18     information. Again, you know, it wasn't for lack of  
19     wanting to comply. It was -- we had trouble getting  
20     the information. And if we had that report -- I  
21     actually did a report reconciling the revenue myself  
22     and, unfortunately, it proved the premise of the  
23     internal audit's report to be totally incorrect.

24            Q     Okay.

25            A     Now, I don't know where that is, but --

1           Q     Let me finish. Let me finish. Let me  
2     finish.

3           A     Okay.

4           Q     This is what your colleague documented in  
5     this file as it relates to this audit that he needs  
6     to complete the finding, but you're not helping  
7     complete the finding. That's what he's saying;  
8     right?

9           A     All I can tell you is this: As you can  
10    see, efforts -- every effort was made to get the  
11    information necessary to complete the proper  
12    analysis and response. There was problems getting  
13    that information from the lessee eventually, I  
14    recall, because I couldn't believe the analysis that  
15    I was able to perform after the fact. After this  
16    stuff here was -- was put out, that the whole basis  
17    under which the revenue review finding was made was  
18    incorrect. Now, you know, if you can find -- there  
19    is a response and the analysis was done.

20          Q     When did you do all of that? Was it after  
21    this memo?

22          A     After this, yeah --

23          Q     Okay.

24          A     -- when we finally got the information  
25    out. If you can find that, it's -- it's -- it

1 exists somewhere in internal audit. Because it was  
2 never mentioned again after I responded back to  
3 internal audit. The whole matter politely and  
4 quietly went away.

5 Now, there was best efforts made on behalf  
6 of my employee to get the information necessary.  
7 That person is not on par with an internal auditor  
8 in terms of knowing accounting.

9 **Q Right. Right. Because you and --**

10 A So the -- the analysis -- the analysis  
11 when the information was available was always going  
12 to be done by me. Maybe that's why he was coming to  
13 me and not her --

14 **Q Right.**

15 A -- but it was her -- it was her primary  
16 responsibility, and I believe that she did  
17 everything that she could to get the information,  
18 which eventually we did get.

19 **Q But the analysis was -- was going to be**  
20 **done by you? That was doing to be your response;**  
21 **right?**

22 A And it was done.

23 **Q Ultimately, some four years later, three**  
24 **years later?**

25 A No, no, no, no, no, no.

1           **Q     Well, the original findings were in '14;**  
2   **correct? Or '15? '15.**

3           A     This is -- this is an analysis to comply  
4   with this audit.

5           **Q     This was the follow-up to the audit;**  
6   **correct?**

7           A     Right.

8           **Q     Right.**

9           A     He was asking for an analysis to be  
10   performed. He -- he had a conclusion in his  
11   follow-up audit that we needed to verify, and in  
12   order for us to respond to it, we needed to get the  
13   information that was hard to get.

14          **Q     But this is three years after the finding;**  
15   **right?**

16          A     It's totally separate. And as you saw in  
17   her e-mail, we went from one supervisor and then no  
18   one for 13 months, and then the new lady comes in  
19   seven months later -- you know, six months later,  
20   when he -- or 90 days after he starts wanting to  
21   perform this.

22                So to be fair, a supervisor left. The  
23   position was vacant for 13 months. She's there four  
24   months. He -- he does an audit finding and says,  
25   hey, you guys are -- are -- are deficient in this



1 area. Well, if you want to go back and say who  
2 should have instituted the proper remedy, it would  
3 have been Ms. Jones, and evidently she didn't.

4 **Q And she reported to you?**

5 A Yes, she did.

6 **Q And it was your responsibility to make**  
7 **sure that if somebody -- if there's some gap --**

8 A In the table of organization, she reported  
9 to me, yes.

10 **Q All right. And you were her boss and you**  
11 **had the responsibility to make sure the job got**  
12 **done.**

13 A And once --

14 **Q That was your job?**

15 A And once -- and once that responsibility  
16 was assigned to her to complete, in good faith, I  
17 presume that it had gotten done.

18 **Q And you knew -- well, you knew she was**  
19 **gone for some period of time and the position was**  
20 **vacant; right?**

21 A But it was in the time that she was still  
22 gainfully employed for a period of time after that.

23 **Q And you never followed up with her to make**  
24 **sure that these outstanding audit findings are taken**  
25 **care of; is that right?**

1     **who needs to make this happen, which is why he's**  
2     **reaching out to you; right?**

3           A     And how would I make it happen any faster  
4     than what she could do?

5           Q     **Well, I mean, that's the question.**

6           A     That's the question.

7           Q     **It was your responsibility; right --**

8           A     No.

9           Q     **-- at the end of the day?**

10          A     No.

11          Q     **It was Ms. Day's responsibility?**

12          A     Yes. It's her primary -- she's the  
13     manager of the Gateway Transportation Center. I was  
14     going to assist her -- because she is not an  
15     accountant -- in performing the follow-up analysis  
16     to verify that Mr. Ikpeama was correct, and he was  
17     not correct.

18          Q     **All right. And so as of this day,**  
19     **April 4, 2018, he ends by saying -- well, let's go**  
20     **back. Let's go to the middle. He says, No. Also,**  
21     **there were two finding in the report dated**  
22     **October 19, 2015. Respond as to the status of these**  
23     **findings. See management's response.**

24                   Did you respond as to the status of those  
25     **findings in 2015?**

1           A     If you have, you know, verifiable proof  
2     that someone has done something that violates any of  
3     the things we've talked about today and it's  
4     provable and it's not speculation and it's not  
5     conjecture and it's not some made-up, bogus  
6     nonsense, then, yes, I agree with you.

7           **Q     So in your view, all of this is made up,**  
8     **bogus stuff?**

9           A     It's untrue and has no shred of truth to  
10    it.

11          **Q     I'm sorry?**

12          A     It's not -- there's not a shred of truth  
13    to it, no.

14          **Q     And so Judy Armstrong, in her memo, she**  
15     **just made it up; is that right?**

16          A     She's wrong. You've heard me dispute most  
17    of what she's put in there.

18          **Q     Well, some of it you didn't dispute;**  
19     **right?**

20          A     I disputed almost all of it.

21          **Q     But some of it you didn't dispute;**  
22     **correct?**

23          A     What didn't I dispute?

24          **Q     Okay. What about Ms. Chana -- Ms. Chana**  
25     **Morton? She had quite a bit of stuff in her**

1     **detailed memo. Do you dispute all of that as well?**

2           A     Yeah. Who's -- just because she wrote it,  
3     does that mean it's true?

4           Q     It doesn't mean it's true, but if a -- if  
5     **one of your subordinates provides you with a**  
6     **detailed summary of what she perceived to be**  
7     **problems, would you --**

8           A     Well, that detailed summary was contrived  
9     after the fact down to the minute of when things  
10    came in and when things went out. It looks -- it  
11    looks pretty contrived to me.

12          Q     **So you're saying Ms. Chana Morton**  
13    **contrived that official investigative --**

14          A     I can -- I could dispute --

15          Q     **Let me finish. Let me finish.**

16                **You're saying Ms. Chana Morton made up all**  
17    **of that stuff she had in her memo?**

18          A     I'm saying that I could argue that -- that  
19    a lot of it is -- is incorrect.

20          Q     **All right. But you would -- are you**  
21    **saying she intentionally put incorrect information**  
22    **in that detailed summary?**

23          A     I can't say what she did or didn't do, if  
24    it was intentional or not, but what I'm saying is, I  
25    dispute a lot of the information and believe that

1           Q     Okay. So were you thinking about  
2     retirement in 2010?

3           A     No, no, no, no, no. It was strictly an  
4     attempt for me to find ways to increase my potential  
5     savings.

6           Q     All right. Other than the City's pension,  
7     are you receiving any other pensions?

8           A     No, sir.

9           Q     Are you receiving other income other than  
10    what you've identified here today?

11          A     No, sir, nothing other than what you've  
12    seen.

13          Q     All right. Let's go to Exhibit 24,  
14    page 1403. Have you seen that document before?  
15    Well, let's skip through that one. Let's go to  
16    STL1405, which is two pages down. And --

17          A     Okay.

18          Q     -- what is that?

19          A     It's my application for retirement.

20          Q     Is that your signature?

21          A     It is.

22          Q     Is that your handwriting?

23          A     Yes.

24          Q     All right. And you say I hereby -- this  
25    is a form you submitted to the employee -- Employees

1 Retirement System, City of St. Louis, and you say --  
2 and you can read the form. You say, I hereby  
3 officially apply for normal retirement effective  
4 10/1/19. My last day on the payroll was/will be  
5 9/30/19, and you sign this request on August 30th,  
6 2019; correct?

7 A Yes.

8 Q All right. Do you believe that if a  
9 Comptroller has reason to believe that there is  
10 financial impropriety, that that -- that the  
11 Comptroller should take steps to investigate to  
12 determine if there is any truth to it?

13 MR. SCHMITZ: Objection. It calls for  
14 speculation as to what another party in a job  
15 he's never worked in would -- would or wouldn't  
16 do.

17 Q (By Mr. Norwood) Subject to that.

18 A Could somebody restate that?

19 Q Well, let's talk about you. When you were  
20 Deputy Comptroller, if information came to light to  
21 you indicating that someone you supervised was  
22 engaged in financial impropriety, would it be  
23 prudent for you to investigate to determine if  
24 that -- if there was any truth to that?

25 A Of course.